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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE STANLEY BLUMENFELD, JR., U.S. DISTRICT JUDGE

SANTA CLARITA VALLEY WATER AGENCY,)
)
Plaintiff,)
)
v.) Case No.
) CV 18-6825 SB (RAOx)
WHITTAKER CORPORATION, et al.,)
) Volume 16
Defendants.) (Pages 1754 - 1907)
)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
TRIAL DAY 9: A.M. SESSION
WEDNESDAY, DECEMBER 1, 2021
8:29 A.M.
LOS ANGELES, CALIFORNIA

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1 WEDNESDAY, DECEMBER 1, 2021; 8:29 A.M.

2 LOS ANGELES, CALIFORNIA

3 -oOo-

4 (Out of the presence of the jury:)

08:29AM

5 THE COURTROOM DEPUTY: Calling Item No. 2, Case
6 No. CV 18-06825-SB, Santa Clarita Valley Water Agency versus
7 Whittaker Corporation.

8 Counsel, please state your appearances starting with
9 plaintiff's counsel.

08:30AM

10 MR. RICHARD: Good morning. Patrick Richard for
11 plaintiff. With me today is Ms. McGuane, Mr. Gee, and
12 Ms. Micevych.

08:30AM

13 MR. BLUM: Good morning, Your Honor. Fred Blum for
14 defendant. With me is Mr. Trowbridge, Mr. Gallagher, as well
15 as Mr. Fryer. Mr. Lardiere will be here later this morning.

16 THE COURT: Very well.

17 Good morning, everyone. Please be seated.

18 We are outside the presence of the jury, and I
19 believe we're waiting on a couple of jurors, and we'll get
20 started as soon as we can.

08:30AM

21 In the meantime, I did want to provide the Court
22 with the -- the parties, rather, with the Court's ruling on
23 Ms. Durant's deposition. And there were a number of
24 objections, and I'm simply going to give you the Court's ruling
25 so that you can properly prepare for the presentation of this

08:30AM

1 evidence.

2 So I'll just indicate the page and line numbers and
3 the ruling:

4 29:13 to 30:25, the objection is overruled.

08:31AM 5 31:3 to 31:5, the objection is sustained.

6 Same ruling, sustained for 31:22 to 32:23.

7 Same ruling, sustained for 50:8 to 50:24.

8 And sustained for 103:18 to 104:8.

9 I'm now moving to the disputed exhibits for

08:32AM 10 Benjamin Lechler. And my interpretation, since I have a binder
11 that only has four exhibits, is that there are only objections
12 to these four exhibits. And otherwise, the exhibits are not
13 going to be able to be used consistent with the Court's
14 direction to the parties previously.

08:32AM 15 MR. BLUM: Your Honor, I believe the other exhibits
16 have been agreed to.

17 THE COURT: I'm sorry?

18 MR. BLUM: I believe the other exhibits we intend to
19 use have been agreed to.

08:32AM 20 THE COURT: That's perfectly fine. And I perhaps
21 misstated what I intended. I assumed that I have the -- the
22 only ones that I have are the ones that are challenged. All I
23 mean to suggest is, if you've given me four and there are eight
24 that are challenged, you wouldn't be able to use the four. To
08:33AM 25 the extent that I have the universe -- when I say you wouldn't

1 be able to use, just not at this time until I've had an
2 opportunity to review them.

3 MR. BLUM: Yes, Your Honor.

4 THE COURT: But that's an academic point it sounds
08:33AM 5 like. The parties only have four challenged documents.

6 MR. BLUM: That's -- that is my understanding,
7 Your Honor.

8 THE COURT: All right. So with that, I'm just going
9 to give you the benefit of the Court's tentative thinking, but
08:33AM 10 as has been true throughout this trial, the parties need to
11 make the objections contemporaneously after an appropriate
12 foundation has been laid.

13 And so at least tentatively, if an appropriate
14 foundation and the like -- I don't limit it to foundation. If
08:33AM 15 everything necessary to introduce these exhibits are provided
16 at trial, the Court likely will overrule the objections on the
17 grounds stated, and that applies to all four of these exhibits.

18 What I'm generally finding -- and -- is this you,
19 Mr. Gee?

08:34AM 20 MR. GEE: Yes, it is, Your Honor.

21 THE COURT: Is that -- and we're nearing the end,
22 but just to give you at least the benefit of the Court's
23 thought process -- is that you're objecting to a lot of things
24 that really go to the weight where you have an argument about
08:34AM 25 why it doesn't necessarily mean what it means or shouldn't be

1 construed in the way it's being offered. A lot of that really
2 just goes to the weight. It's not a question of admissibility.

3 And so you probably have been noticing my tentative
4 thoughts have gone a lot that way, and that has been the
08:34AM 5 Court's thought process. Okay?

6 MR. GEE: Yes.

7 THE COURT: All right. Is there anything else that
8 the Court needs to address? We still have jury instructions,
9 of course, and the JMOL still is pending. But is there

08:35AM 10 anything for purposes of the witnesses who will be testifying
11 that the Court needs to address that I have not? Let me
12 start -- I'm going to start with the plaintiff, please,
13 Mr. Richard.

14 MR. RICHARD: Yes. In our rebuttal case, we
08:35AM 15 identified -- I think it's 7 minutes and 20 seconds of Mr. Daus
16 who was their 30(b)(6) witness who I understood up until Sunday
17 they would be calling live. So we've designated a portion of
18 that. We've just received counter-designations. There's going
19 to be an issue because those designations go well beyond
08:35AM 20 completeness. And so he's their witness. If they want to call
21 him, they can call him live. But to have a bunch of hearsay
22 that they want to play from this long deposition, I haven't had
23 a chance to further meet and confer, but that's my position. I
24 think that's a correct statement of the law.

08:35AM 25 Other than that, that's in our rebuttal case, so we

1 won't get to that this morning for sure.

2 THE COURT: All right. And where is that currently
3 physically? Do I have the designations and cross-designations?

4 MR. RICHARD: I don't know if Your Honor has the
08:36AM 5 cross-designations. I believe binders have or will be
6 delivered of all of that. I would assume that it's going to be
7 at the 10:30 break, Your Honor, that we'll sort that out.

8 THE COURT: All right. Mr. Blum or -- yes?

9 MR. BLUM: Your Honor, oh, I'm sorry.

08:36AM 10 MR. GALLAGHER: You can.

11 MR. BLUM: We believe we can work it out. We agree
12 that we could only designate for completeness. That's not at
13 issue. We'll just -- ten minutes we can resolve it.

14 I have a logistical question, Your Honor. We've
08:36AM 15 agreed on the -- what needs to be read from the three
16 depositions. My preference is to have Mr. Fryer on the witness
17 stand and Mr. Trowbridge read question, answer, question,
18 answer. Is that okay with the Court?

19 THE COURT: Yes. This is in the instance where we
08:36AM 20 just have the transcript?

21 MR. BLUM: Yes, sir.

22 THE COURT: That's fine.

23 MR. BLUM: All right. Thank you.

24 THE COURT: And the jury is now all here. So it
08:37AM 25 will just be a moment, but they should be coming in shortly.

1 MR. BLUM: Your Honor, there is one issue that --
2 never mind. We might -- see if we can resolve it first.

3 THE COURT: All right.

4 And do we have Mr. Simpson?

08:38AM 5 MR. GALLAGHER: We do.

6 THE COURT: Let's please have him resume the witness
7 stand.

8 MR. BLUM: Your Honor, does the Court have a problem
9 if I absence myself during Mr. Simpson's testimony?

08:38AM 10 THE COURT: I do not.

11 (In the presence of the jury:)

12 THE COURT: We remain on the record in Santa Clarita
13 Valley Water Agency versus Whittaker Corporation. We are now
14 joined by the jury.

08:39AM 15 Good morning, ladies and gentlemen.

16 THE JURY: Good morning.

17 THE COURT: And you may recall, we are still in the
18 defense case, and Mr. Simpson was testifying in direct.

19 And so, Mr. Simpson, if you would kindly resume the
08:39AM 20 witness stand.

21 Good morning. And please be seated.

22 You are not going to be sworn in again because you
23 have previously been sworn, but you do understand that you
24 continue to testify under oath?

08:39AM 25 THE WITNESS: I do, yes.

1 THE COURT: All right. And please make sure that
2 you do what you were doing yesterday which is please speak into
3 the microphone so that everyone is able to clearly hear you.

08:39AM 4 And, Mr. Gallagher, as soon as Mr. Simpson is
5 ready -- give him a moment -- you may proceed.

6 MR. GALLAGHER: Thank you, Your Honor.

7 THE WITNESS: I'm ready, thank you.

8 **TIMOTHY SIMPSON,**
9 **DEFENDANT'S WITNESS, PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:**

08:40AM 10 **DIRECT EXAMINATION (RESUMED)**

11 BY MR. GALLAGHER:

12 Q. Mr. Simpson, yesterday we were, I think, delving
13 into the DDW permitting situation. Before we get into that, I
14 wanted to make sure, because it was getting late in the day
08:40AM 15 yesterday, going back to the 205 notice.

16 Do you recall that conversation?

17 A. I do.

18 Q. Okay. And I just want to make it clear, the notice,
19 as you understand it, was provided to Whittaker and
08:40AM 20 Mr. Lardiere; correct?

21 A. Yes.

22 Q. Now, did Mr. Lardiere instruct you to respond on
23 Whittaker's behalf, if you know?

24 A. He did. He asked --

08:40AM 25 MR. RICHARD: Objection, Your Honor. Hearsay.

1 THE COURT: I'm going to overrule the objection but
2 limit its relevance.

3 You're not to take this for the truth of the matter
4 but just in terms of the actions, if any, that were taken based
08:40AM 5 upon what you're going to be hearing.

6 Go ahead.

7 Q. (BY MR. GALLAGHER:) You may answer.

8 A. Yes. Mr. Lardiere asked us to prepare a written
9 response to the notice of perchlorate detections at 205.

08:40AM 10 Q. And did you do that?

11 A. We tried. We -- as I think I testified yesterday,
12 our -- our hope was that the operation of 201, Well 201, which
13 is upgradient of 205, would be sufficient to protect
14 Well V-205. And we were awaiting the results of a containment
08:41AM 15 study by Castaic Lake's consultant --

16 Q. Castaic Lake now being the agency; correct?

17 A. Yeah, the water agency's consultant on the
18 sufficiency of the hydraulic capture at 201. We had just put
19 that well into service, and we were waiting to see that the
08:41AM 20 benefit at the 205 well, whether that would be sufficient to
21 contain the perchlorate plume.

22 Q. And the containment study would help you -- assist
23 in making that determination?

24 A. That's correct.

08:42AM 25 Q. And did you ever receive that containment study?

1 A. It -- it was a -- we finally received it but only
2 after the litigation -- after the lawsuit was filed. It was
3 something -- it was a topic of our monthly meetings. And they
4 would ask us, What is your response to 205?

08:42AM

5 Q. And did you, in your technical meetings, advise the
6 agency and its consultants of your request that you were
7 waiting for this containment study before you could respond to
8 the 205 notice?

08:42AM

9 A. Indeed, I did. It was something that we would
10 request at every meeting. They would ask about 205. We'd say
11 we need the containment study so we can really evaluate what
12 the state of capture is. And -- and it kept being promised.
13 It kept being delayed. And only after litigation -- the
14 litigation was filed were we able to receive that report.

08:43AM

15 Q. Thank you.

16 Back to the discussion where we left off last night,
17 the DDW permitting status for 201. Do you recall that? We
18 started getting into it.

19 A. I do.

08:43AM

20 Q. Okay. And what's your understanding, prior to this
21 litigation, of the status of that DDW permitting process as it
22 related to 201?

08:43AM

23 A. Well, documents had been submitted to DDW by the
24 water agency's consultants, and there was back-and-forth about
25 various technical items. We did not have a seat at the table

1 in those discussions. We were not copied on correspondence
2 between the water agency and DDW. So we were a bit -- well, we
3 were very much out of the loop on that.

08:43AM 4 THE COURT: Let me stop you and -- I don't think
5 there's a foundation for a lot of this. So you're going to
6 have to make sure that you establish a foundation before asking
7 him about the process. He's now repeatedly stated they didn't
8 have a seat at the table.

08:44AM 9 Q. (BY MR. GALLAGHER:) Okay. So how were you
10 involved, if at all, in the DDW permitting process? How do you
11 have any knowledge about what the status is?

08:44AM 12 A. Well, what we learned from the technical meetings --
13 again, it was another agenda item. In every meeting we had the
14 status of permitting, and -- and the technical folks from the
15 water agency would report on the status.

16 Q. And why is that relevant to V-201, just if you can
17 explain?

18 A. Well, certainly --

19 MR. RICHARD: Objection. Vague, Your Honor.

08:44AM 20 THE COURT: Sustained.

21 Q. (BY MR. GALLAGHER:) Why is it relevant to the V-201
22 wellhead treatment in this containment effort?

23 MR. RICHARD: I'm not sure what the "it" is.

24 Objection, vague.

08:44AM 25 THE COURT: It is vague.

1 Q. (BY MR. GALLAGHER:) Why is this permitting process
2 important to the V-201 wellhead treatment containment effort?

3 A. So the original intent of putting wellhead treatment
4 at 201 was, first, to provide containment and, second, to
08:45AM 5 restore water supply. And so --

6 Q. How were you involved in this process, you know, in
7 terms of the wellhead treatment, the permitting process, and
8 getting this well back online for containment and potable
9 water?

08:45AM 10 A. Well, there's a lot there in that question.
11 So we were involved in the actual implementation of
12 wellhead treatment at 201. We worked with the agency to -- to
13 implement, to -- to make that happen and to get the tanks
14 installed as quickly as possible to restore water supply. We
08:46AM 15 were very motivated. We saw the need to get 201 operating as
16 quickly as possible to provide protection for downgradient
17 wells.

18 THE COURT: I'm going to stop you. The question was
19 very general, and so this is now a narrative.

08:46AM 20 BY MR. GALLAGHER: Okay. I'll hone in on it.

21 Q. (BY MR. GALLAGHER:) So in terms of not having a
22 seat at the table, did you mean -- well, what did you mean by
23 that with respect to the permitting process?

24 A. Sorry if I confused you.

08:46AM 25 Only in regards to the permitting, you know, the

1 discussions with DDW. We were not involved in the actual, you
2 know -- I'm sorry, preparing the documents needed to obtain the
3 permit to operate that well for potable purposes.

08:46AM 4 Q. In your technical meetings, did you have any
5 discussions with the agency and/or its consultants about what
6 was being done, being prepared as part of this permitting
7 process?

08:47AM 8 A. We were told that -- that they were either waiting
9 for comments back from DDW or that we are in the process of
10 updating our documents to resubmit to DDW. So we were -- we
11 were told that the process was ongoing.

12 Q. And were you ever told what the nature of those
13 discussions were between the agency, its consultants, and the
14 DDW?

08:47AM 15 A. Well, these are -- these are fairly involved
16 reports. There's a lot to them. And we didn't know the
17 particulars as to what was -- what issues were at hand in terms
18 of additional information that DDW was requesting.

08:47AM 19 Q. Did the agency or its consultants ever articulate to
20 you what the concerns were with the DDW and this permitting
21 process?

22 A. They told us that there were concerns about VOCs
23 in -- in the water and in the -- the water extracted from the
24 wells and that that was something that they had to deal with.

08:48AM 25 Q. And do you have an understanding of how the agency

1 was responding to those concerns?

2 MR. RICHARD: Objection. Lacks foundation,
3 Your Honor.

4 THE COURT: Sustained.

08:48AM 5 Q. (BY MR. GALLAGHER:) Did you have any conversations
6 with the agency or the technical folks about how they were
7 going to address those concerns raised by the agency?

8 MR. RICHARD: I think that misstates the testimony,
9 Your Honor. Objection.

08:48AM 10 THE COURT: Overruled.

11 You can answer. Did you have such discussions with
12 the agency representatives?

13 THE WITNESS: They -- they did tell us that VOCs
14 were a concern and that they were trying to address that
08:48AM 15 concern. There was no mention of installing treatment for
16 VOCs, that -- that they were addressing it through their MCL
17 equivalent calculations. They did tell us that.

18 Q. (BY MR. GALLAGHER:) And do you have an
19 understanding in your conversations with the agency what that
08:49AM 20 meant, how are they dealing with it through the MCL equivalency
21 calculations?

22 A. There was some back-and-forth, we were told, by the
23 agency representatives that -- that they had to redo the MCL
24 calculations. And the results of those revised calculations,
08:49AM 25 when they account for some of the naturally occurring

1 contaminants -- and I think the other two contaminants were
2 hexavalent chrom and uranium, the MCL calculation was below 1.

3 THE COURT: Did you say hexavalent chrom?

4 THE WITNESS: I did, yes, hexavalent chrom.

08:49AM

5 Q. (BY MR. GALLAGHER:) And do you have an
6 understanding of the significance of the MCL equivalency being
7 below 1?

8 A. It -- it means that the -- if the MCL equivalent is
9 below 1, it means that a treatment for --

08:50AM

10 THE COURT: I'm going to have you ask him another
11 question because now it's not clear whether he's reporting his
12 own knowledge as opposed to what he was being told, which is
13 the subject of this discussion.

08:50AM

14 Q. (BY MR. GALLAGHER:) Did you ever have a discussion
15 with the agency and/or its representatives as to the
16 significance of the MCL equivalency being -- that number being
17 below 1?

08:50AM

18 MR. RICHARD: Your Honor, I'm just going to raise a
19 relevance objection in light of the permit not having issued to
20 this whole line at this point.

21 THE COURT: Overruled.

22 You can answer that question. And please make sure
23 that you have a recollection, if so, of a specific
24 conversation.

08:50AM

25 THE WITNESS: I -- I have a general knowledge that

1 the -- just in my profession as a consulting engineer.

2 THE COURT: All right. That's not the question.

3 Ask another question, please.

4 Q. (BY MR. GALLAGHER:) Backtracking a little bit,
08:51AM 5 after -- I believe you testified earlier that the wellhead
6 treatment at 201 was installed and 201 was back online in
7 approximately 2017. Is that accurate?

8 A. That's correct.

9 Q. Okay. And between 2017 and to date, do you have an
08:51AM 10 understanding that the permitting process is still ongoing?

11 A. Yes. That's correct.

12 Q. Okay. And in your -- and you had conversations
13 about the status of this permitting process during these
14 technical meetings with the agency and its consultants. Is
08:51AM 15 that fair?

16 A. That's correct.

17 Q. Do you have an understanding, based on those
18 technical meetings, what the cause or the reason for the delay
19 is in issuing the permit based on your conversations with the
08:51AM 20 agency and its technical folks?

21 A. As I said earlier, these are involved permits. The
22 technical reports that are needed to support the -- the
23 permit -- issuing the permit are involved. And I'm not aware
24 of the particular comments from DDW that had to be responded
08:52AM 25 to.

1 Q. Did you take any efforts on your own on behalf of
2 Whittaker to make contact with the DDW to find out for yourself
3 what the status is of the permitting process?

4 A. I -- I did.

08:52AM

5 Q. Okay. And did you talk to anybody at the agency in
6 particular to find out what the status is of the permitting
7 process?

8 A. I -- I did.

08:52AM

9 MR. RICHARD: I'm just -- vague as to "agency." I'm
10 not sure he's talking about the water agency or the state
11 agency.

12 THE COURT: Sustained.

13 MR. GALLAGHER: I apologize. I'll clear that up.

08:52AM

14 Q. (BY MR. GALLAGHER:) When I asked that -- if you
15 took it upon yourself to talk to anybody at the agency, I meant
16 the DDW. Did you take it upon yourself to speak with the DDW
17 to find out the status of the permitting process?

18 A. I did.

08:52AM

19 Q. Okay. And did you speak to anybody in particular at
20 the DDW regarding the status of the permitting process?

21 A. I spoke to Bill Lang of DDW.

22 Q. And as you sit here today, do you have an
23 understanding as to what the delay is in the status of issuing
24 this permit for V-201?

08:53AM

25 A. As of last week when I talked to Mr. Lang, I was

1 told that they're still awaiting documents --

2 THE COURT: Hold on, please.

3 MR. RICHARD: Hearsay, Your Honor.

4 THE COURT: Sustained. Sustained.

08:53AM 5 Q. (BY MR. GALLAGHER:) Not going into the specifics of
6 the conversation, do you have an understanding, as you sit
7 here, as to the delay in issuing the DDW -- excuse me --
8 issuing the 201 permit by the DDW?

9 A. It's my understanding that DDW is still waiting for
08:53AM 10 documents from the water agency.

11 Q. Do you have any understanding, as you sit here
12 today, based on those conversations, whether or not the VOCs
13 are the holdup or cause for why the V-201 permit has not been
14 issued?

08:53AM 15 A. They are not.

16 Q. Okay. Switching gears.

17 Your history with the Whittaker-Bermite site, as you
18 sit here today, it involves dealing with aspects of the onsite
19 and offsite remedy, does it not?

08:54AM 20 A. It does.

21 Q. Okay. And I believe we testified -- you testified
22 yesterday a little bit about the OUs involved. Do you remember
23 that?

24 A. I don't remember, but I'm -- I'm aware of the -- of
08:54AM 25 the seven OUs at the site.

1 Q. Okay. And can you generally describe the OUs that
2 pertain to onsite versus offsite?

08:54AM

3 A. Well, OUs 1 through 6 are onsite, and OU-7 is
4 groundwater. And groundwater is onsite and offsite. So OU-7
5 extends to the extent of the plume.

6 Q. Okay. And for the onsite OUs 1 through 6, did the
7 remedy involve both soil and groundwater treatment?

8 A. It did, yes.

08:55AM

9 Q. And for the OU-7 -- what's the status of that
10 remedy, if you will?

11 A. So there is a remedial action plan -- we call it a
12 RAP -- for offsite groundwater, and that has been approved by
13 Department of Toxic Substances Control, DTSC. It's a state
14 agency. And the strategy for offsite groundwater is -- is the
15 containment achieved through these production wells.

08:55AM

16 Q. As part of the OU-7 RAP, are monitoring wells
17 discussed?

18 A. They are.

08:55AM

19 Q. Okay. And do you have an understanding of what the
20 current status of the discussion of monitoring wells is?

21 MR. RICHARD: Objection. Vague, Your Honor.

22 THE COURT: Sustained.

23 Q. (BY MR. GALLAGHER:) Monitoring wells, are they a
24 part of the RAP for OU-7?

08:56AM

25 A. They are, yes.

1 Q. And can you describe for us what the process is of
2 deciding whether or not monitoring wells should be installed as
3 part of the OU-7 RAP?

4 THE COURT: Are you asking historically what
08:56AM 5 occurred since -- or are you asking what's going to occur?

6 MR. GALLAGHER: I'm asking what's currently his
7 understanding.

8 THE COURT: So you're asking him the extent to which
9 monitoring wells have been installed as part of the OU-7 RAP?

08:56AM 10 MR. GALLAGHER: And the plan, if any, for future
11 monitoring wells and what that process is.

12 THE COURT: Why don't you break that down into two
13 parts. Monitoring wells that currently have been installed
14 pursuant to the RAP and then, next, future monitoring wells.

08:56AM 15 THE WITNESS: Okay. So there are a number of
16 monitoring wells, offsite monitoring wells. There's many
17 onsite monitoring wells, and there are offsite monitoring wells
18 that were installed in consultation with Department of Toxic
19 Substances Control, with their approval. And there are also
08:57AM 20 what we would call sentry wells, and the sentry wells are
21 located upgradient of the production wells, intended to be
22 early warning signs.

23 You don't want your production well to be the first
24 time you see a contaminant that you weren't aware of. So you
08:57AM 25 put these -- these monitoring wells upgradient so that you have

1 an idea of what would be eventually drawn into the production
2 well.

3 Q. (BY MR. GALLAGHER:) So -- so for moving forward,
4 if -- is there a process in connection with this RAP and OU-7
08:57AM 5 if there is a need or a suggestion that additional monitoring
6 wells are needed? Is there a process for deciding whether that
7 should happen?

8 A. There is. Well, first of all, there is a very
9 significant effort in monitoring these wells, the onsite wells
08:58AM 10 and the offsite wells. And Whittaker actually works with the
11 water agency and -- and coordinates those efforts.

12 Q. So if --

13 A. And it's also an adaptive management where you learn
14 from the data and you -- from there, you decide if additional
08:58AM 15 monitoring wells are needed.

16 Q. So if there's a suggestion or recommendation or
17 request by anybody that additional monitoring wells or a well
18 is needed, what is that process? How -- what's involved in
19 that process?

08:58AM 20 A. Well, this is a public process. You know, all of
21 the -- the, um -- the work that's done at the Bermite site and
22 for OU-7 is a public process. And the public is -- is able to
23 comment on -- on the various reports, and there's also -- I
24 would call the public process for this project sort of public
08:59AM 25 participation on steroids because they -- they have these

1 multi-jurisdictional task force meetings that are held -- that
2 were held monthly for a while. With COVID, it certainly has
3 tapered -- tapered down.

08:59AM 4 Q. So, for example, if the agency wanted to request --
5 excuse me -- an additional monitoring well or ten monitoring
6 wells, is there a process by which it could go through to
7 request that of the DTSC in connection with this OU-7 route?

08:59AM 8 A. They could. They certainly have an audience with
9 DTSC at these multi-jurisdictional task force meetings. The
10 agency participates, as does DTSC. So that would be the forum
11 if there was a concern about the sufficiency of the monitoring
12 well network to make those concerns -- to make DTSC aware of
13 those concerns.

09:00AM 14 Q. And as you sit here today, have you participated in
15 any of those discussions with the DTSC about the need for
16 additional monitoring wells or any activity as it relates to
17 OU-7?

09:00AM 18 A. I do not participate in the multi-jurisdictional
19 task force meetings. My colleague, Dr. Amini, does. But DTSC
20 does participate in our monthly technical meetings, and they
21 have not brought up concerns about the sufficiency of the
22 monitoring well network.

23 Q. And "they" being the agency?

09:00AM 24 A. Department of Toxic Substances Control, that's
25 correct.

1 Q. Now, going back to 201 for a minute. As you
2 mentioned, the well is online, it has wellhead treatment, and
3 is treating for perchlorate; correct?

4 A. That's correct.

09:00AM

5 Q. And there's no permit --

6 A. Hold on. I'm sorry.

7 Q. Sorry.

09:01AM

8 A. I answered too quickly. It is a -- it is able to
9 treat water, but it's my understanding it's currently not
10 operating. It's been shut down for about the last three months
11 for -- for maintenance.

12 Q. And prior to that, was it treating water from the
13 Saugus --

14 A. It was.

09:01AM

15 Q. -- for perchlorate? Sorry.

16 Because the -- the water agency does not have a
17 permit, what does it do with the water after it's treated, if
18 you know?

09:01AM

19 A. I do. The water is, um -- is discharged to a local
20 storm drain where it eventually goes to the Santa Clara River.
21 And so the water is basically discharged to surface water
22 with -- under authorization with what they call NPDES permit,
23 National Pollutant Discharge Elimination System permit, that
24 allows them to discharge to surface water.

09:02AM

25 And in order to meet the discharge limits of that

1 permit, the water has to be dechlorinated and -- I'm sorry. It
2 has to be blended. And -- and because it's being blended with
3 treated surface water, the surface water contains chlorine, and
4 they have to dechlorinate that in order to discharge. And the
09:02AM 5 reason they're blending that water is because the natural
6 sulfate concentrations are above the discharge standards.

7 Q. Does the NPDES or NPDES permit require the agency to
8 treat the water before it's discharged to the river for VOCs?

9 A. No, it does not.

09:02AM 10 Q. Let's turn to your opinions.

11 So you're also retained as an expert in this matter.
12 You understand that; right?

13 A. I do.

14 Q. Okay. And can you tell us, generally speaking, the
09:03AM 15 scope of that retention, what you were asked to do?

16 A. I was asked to prepare a rebuttal report to
17 Dr. Najm's cost estimate for VOC treatment and perchlorate
18 treatment at Saugus 1 and 2 wells, V-201, and V-205. And
19 specifically, I was asked to assume that VOC treatment would be
09:03AM 20 needed at Saugus 1 and 2 and 201 and to come up with a cost
21 estimate to do that. And then for 205, I was asked to assume
22 that treatment for both perchlorate and VOCs would be required
23 and to come up with a cost estimate to do that.

24 Q. Now, you said you assumed treatment would be
09:04AM 25 required. You were asked to assume treatment would be required

1 for VOCs; correct?

2 A. That's correct.

3 Q. As you sit here today, do you have any -- what's
4 your opinion on whether or not the treatment will even be
09:04AM 5 needed for VOCs?

6 A. Well, that -- that's my first opinion, is that
7 Dr. Najm assumes that VOC treatment is needed at the -- you
8 know, for Saugus 1 and 2, for V-201 and 205. And there is no
9 regulatory requirement to install treatment for VOCs at any of
09:04AM 10 those wells.

11 Q. As part of your analysis into those costs, what did
12 you do to prepare your opinions to rebut Mr. Najm's estimates?

13 A. So to come up with our cost estimate, my cost
14 estimate, to implement treatment at these wells, we looked at
09:05AM 15 what we had just recently completed in 2017 for V-201. We
16 thought that that's a real-life example, it's a real well that
17 was -- you know, we installed -- we worked with the water
18 agency to implement wellhead treatment at that site.

19 And we were very involved in that project. We
09:05AM 20 actually -- we were sort of the financial manager of that
21 project. The invoices came to us. They were first approved by
22 the water agency, and then we would approve those and process
23 them for payment.

24 Q. In your time with -- working for Whittaker at the
09:05AM 25 Bermite site, this isn't the first wellhead treatment that's

1 been installed there -- right? -- on behalf of the agency?

2 THE COURT: When you say "wellhead treatment that's
3 been installed there," define "there," please.

4 MR. GALLAGHER: Well, let me just rephrase the
09:06AM 5 question.

6 Q. (BY MR. GALLAGHER:) Wellhead treatment isn't the --
7 it's not the first time that wellhead treatment has been
8 utilized by the agency in connection with its production wells.

9 A. That's correct. Wellhead treatment was installed at
09:06AM 10 Well Q-2 as well.

11 Q. Okay. And the Saugus Perchlorate Treatment
12 Facility, it's a form of wellhead treatment, is it not?

13 A. Well, you're pushing water through ion exchange
14 vessels to remove the perchlorate. That is similar. But much
09:06AM 15 different project, I think I testified about this yesterday,
16 that the Saugus 1 and 2 treatment plant -- the treatment
17 vessels are at a separate location, and that project was much
18 more complicated because you had to convey water from the wells
19 to the central treatment plant.

09:06AM 20 Q. And as opposed to what happened at 201, for example?

21 A. 201, they built an enclosure and -- and put
22 treatment vessels in. It was a much simpler project.

23 Q. And was the same true for Q-2?

24 A. At the time, yes. When -- when Q-2 -- when
09:07AM 25 perchlorate detections were found at Q-2, the water agency very

1 quickly installed vessels to treat for perchlorate.

2 Q. So when you're preparing your -- excuse me. In
3 preparing your opinions, why is that so relevant, the fact that
4 you had V-201 and Q-2 wellhead treatment? Why is that relevant
09:07AM 5 to your analysis?

6 A. Well, I guess very simply we know what things cost.
7 We did it. You know, on behalf of Whittaker, we managed the
8 technical -- I mean, the -- the financial aspects of this
9 project. And we -- we actually had a seat at the table in that
09:08AM 10 regard in that we were involved in -- in monitoring the
11 progress of the project and processing the payments.

12 So we had a very good idea of what wellhead
13 treatment should cost.

14 Q. So in terms of what Mr. Najm did, what do you
09:08AM 15 disagree with? I mean, you have real costs. What -- what's
16 the problem with what Dr. Najm did?

17 A. Well, first of all, he added a lot of contingency to
18 his estimates. And he used a -- an estimating guide that
19 assumes a high degree of uncertainty. And in an engineering
09:08AM 20 project, when something is unknown and you're trying to
21 estimate the cost, you would -- you would add contingency for
22 the potential unknowns.

23 And in looking at his cost, it looks like he added a
24 substantial amount of contingency that really drove up the
09:09AM 25 price. And -- and these are fairly simple projects. You know,

1 this is -- this is very much a commodity.

2 Q. When you say "a commodity," what do you mean? Can I
3 go to the store and just say, hey, I want this system, and buy
4 it full price? I don't understand what you mean.

09:09AM

5 A. It's probably not -- there is engineering involved
6 because you have to figure out how you're going to hook it up
7 and the size pumps you need and whether you need a slab and the
8 seismic tie-downs for that. It's not going to the store and
9 buying it. You can't go to Home Depot and buy a treatment

09:09AM

10 system.

11 But this is a commodity in that there are numerous
12 vendors that sell these tanks and -- and the main difference,
13 really, between the -- the Saugus 1 and 2 project that we were
14 involved in and the -- the V-201 wellhead treatment project is
15 the way the project was executed.

09:10AM

16 For -- for 201, it was -- I would say a design-build
17 approach where we -- we said let's just deal directly with
18 the -- the vendors that sell the tanks and -- and have a
19 contractor come in, and let's not over-engineer it. Let's just
20 do enough engineering so we can execute the project quickly,
21 and that's what we did.

09:10AM

22 And so the -- that formed the basis for my -- my
23 cost comparison to what Dr. Najm assumed.

24 Q. Now, I know you prepared some tables. And if I may,
25 I'd like to publish this for demonstrative purposes only.

09:10AM

1 1454.

2 MR. RICHARD: No objection, Your Honor.

3 Q. (BY MR. GALLAGHER:) And so you prepared this table
4 as part of your expert report. Can you explain to us what this
09:11AM 5 is and how it served as the foundation of what you think the
6 cost estimate should be for wellhead treatment at these wells?

7 A. Certainly.

8 So the way I came up with a cost estimate for -- in
9 this case, this is adding granular activated carbon to treat
09:11AM 10 for VOCs at Well V-201.

11 Q. Mr. Simpson, let's take a step back.

12 When we're talking treating perchlorate or treating
13 PCE or VOCs or whatever, can you -- are the systems similar?

14 A. The -- the contact time is different, but, you know,
09:12AM 15 the principle of using vessels filled with media is -- is
16 similar. The -- the media is the main difference. For -- for
17 perchlorate, the water is treated with ion exchange media. And
18 then for VOCs, we use carbon, granular activated carbon.

19 Q. But just, generally speaking, you're still dealing
09:12AM 20 with vessels. They're still generally of the same size.
21 There's still electrical. There's still foundation. I mean,
22 is it fundamentally the same in that regard?

23 A. Yes. It's pumps, piping, control equipment, tanks
24 filled with vessels -- vessels filled with media.

09:12AM 25 Q. And the only difference between the two contaminants

1 are the type of media you're going to use?

2 A. And the contact time.

3 Q. And the contact time.

4 So -- okay. So when you prepared this estimate,
09:12AM 5 what were you relying on, then, foundationally? You're just
6 relying on the same basic concept of treatment systems are
7 interchangeable?

8 MR. RICHARD: Objection. Leading, Your Honor.

9 THE COURT: Sustained.

09:13AM 10 Q. (BY MR. GALLAGHER:) Explain to me why it is you're
11 using certain numbers here based on wellhead treatment for
12 perchlorate.

13 A. Okay. So what Dr. Najm put together was
14 theoretical, you know, going line item by line item through
09:13AM 15 what costs could be incurred. And we realized that, instead of
16 doing that, taking that approach and adding all the contingency
17 that he added, why don't we look at what was actually incurred
18 in a very recent project that, you know, I would view as very
19 successful and use that same approach for installing additional
09:13AM 20 treatment at Saugus 1 and 2, 201, and then new treatment at
21 205.

22 And so --

23 Q. If I heard you right, you're taking the recent
24 perchlorate wellhead treatment at 201 and Q-2, and you're using
09:14AM 25 that as a baseline to run out these estimates for VOC

1 treatment?

2 A. That's correct because it's similar. You know, it's
3 installing tanks, pumps, pipes. We took the realized costs
4 from the 201 project, which was \$1.9 million, and then we
09:14AM 5 adjusted for additional vessels, additional foundation that
6 would be required. For VOC treatment, you need a backwash
7 system, so we added that.

8 And then we subtracted things that are redundant
9 that we already have at the site. That could be -- you know,
09:14AM 10 that we don't want to double count, such as the connection to
11 the main waterline, the electrical controls and the SCADA
12 system. The SCADA system is used to control the -- to monitor
13 the treatment and to control it. And then we -- we made
14 adjustments as shown on the -- the jury can see the table.

09:15AM 15 Q. So this 1.9, when you said that was the cost for the
16 V-201 perchlorate treatment system, anything built into that?
17 Is that all in? Can you explain what that number is and how
18 you got there?

19 A. Sure. So the original estimate before we -- you
09:15AM 20 know, as we started this project working with the water agency
21 to implement treatment at 201, the original estimate was about
22 1.3 million. And then there are extras. Extras happen in
23 construction, you know.

24 And -- and so the 1.9 is the actual cost, that we
09:15AM 25 have invoices that were paid by Whittaker. So what's built

1 into the 1.9 million is the contingency, and that's the factor
2 that Dr. Najm added multiple times in his estimates -- well,
3 it's already built into our starting point. We already assume
4 that -- that 1.9 includes a half a million dollars in extras
09:16AM 5 that was incurred.

6 Q. So as you get through this table, you finally get to
7 the ultimate price or ultimate estimate for V-201 VOC treatment
8 cost of 2. -- let's round up -- \$2 million?

9 A. \$2.2 million.

09:16AM 10 Q. Let's move on to the next exhibit, 1455. It has
11 been stipulated for demonstrative only.

12 A. Before you move on, could I --

13 Q. Yeah. We can go back.

14 A. That also -- we made -- we're assuming that that
09:16AM 15 same number, that 2.2 million, would also apply for installing
16 tanks for treating VOCs at the Saugus 1 and 2 treatment plant.
17 So it's the same -- that cost would be similar.

18 Q. So that cost would be similar for treatment at
19 Saugus 1 and 2, obviously 201, and 205?

09:17AM 20 A. No. 205 requires more vessels. So that's --

21 Q. We'll get there.

22 A. The final table is my estimate for 205.

23 Q. So let's skip to -- back to 1455, please.

24 Okay. Can you walk us through this estimate and
09:17AM 25 what it's for?

1 A. Sure. Very similar approach. The starting point is
2 the realized cost for treatment at 201, which includes a
3 contingency already. It's built in because of the extras that
4 occurred. We said, okay, we'll make -- we'll assume that those
09:17AM 5 same extras will be needed or could happen for 205.

6 And then we added additional vessels to account for
7 the flow rate. We made the same assumption as Dr. Najm, that
8 the flow rate would be 2700 gallons per minute. And then --
9 and so we -- we -- we added additional vessels, and we end up
09:18AM 10 with a cost of 2.2 million for the treatment capital and
11 then --

12 Q. Can you pause there?

13 Is that the 2.2, then, total cost for V-205
14 treatment, or am I just misunderstanding your table?

09:18AM 15 A. I'm sorry. So --

16 Q. What I want you to focus on, if you can, in going
17 through your estimates for 205, I'd like you to break out, if
18 possible, the cost for V-205 VOC treatment versus perchlorate
19 treatment.

09:18AM 20 A. Okay. Thank you. And I think I misspoke. Thank
21 you for stopping me there.

22 So the first number here of -- of 1.225 million is
23 the -- is the additional cost for perchlorate because for --
24 perchlorate treatment, which would be additional ion exchange
09:19AM 25 vessels.

1 And for that estimate, we assumed the cost for the
2 Q-2 vessels. And that's a very recent project that was done --
3 I think it was completed earlier this year -- where new vessels
4 were installed to treat perchlorate at Q-2. And so those
09:19AM 5 are -- those are the actual incurred cost.

6 And so we use those costs to come up with the tank
7 cost and the additional foundation and -- and additional
8 construction cost to implement perchlorate treatment at 205.
9 And so the additional cost on top of the 1.9 would be 2.2 --
09:20AM 10 1.225 million for that.

11 Q. Can you --

12 A. And then we go on to look at -- assuming that VOC
13 treatment is needed, we would have to add additional wells -- I
14 mean, I'm sorry, additional activated carbon vessels and there
09:20AM 15 will be additional construction and engineering, and that would
16 add an additional 1.3 million.

17 And so when we add all that together, we end up with
18 a \$6.625 million estimate.

19 Q. So looking at this table, if I'm adding it up right,
09:20AM 20 for VOC treatment capital costs only at 205, we're looking at
21 the 1 -- excuse me. Start over.

22 If I'm breaking this up between perchlorate
23 treatment and VOC treatment, focusing on perchlorate treatment,
24 if I'm adding this up right, the capital cost for V-205
09:20AM 25 perchlorate treatment is the 1.9 plus the 1.225 number?

1 A. That's correct.

2 Q. Okay. And then for VOC treatment only, capital
3 costs, at 205, we're looking at the 2.2 plus the 1.3?

4 A. That's correct.

09:21AM 5 Q. Okay. Let's move on to the next slide, 1456. And
6 it has been stipulated to, demonstrative only.

7 Now, this is your ultimate total cost for -- excuse
8 me -- ultimate capital costs for all the treatment, assuming
9 it's required; correct?

09:21AM 10 A. That's correct.

11 Q. Okay. Now, did you look at Dr. Najm's O&M costs as
12 it relates to this treatment?

13 A. I did.

14 Q. And what does O&M --

09:21AM 15 MR. RICHARD: Objection, Your Honor. Beyond the
16 scope. This is not in his report.

17 THE COURT: Sustained.

18 MR. GALLAGHER: Actually, it was testified to.

19 THE COURT: The objection is sustained if it wasn't
09:22AM 20 in his report.

21 MR. GALLAGHER: Fair enough.

22 Nothing further.

23 THE COURT: Mr. Richard.

24 MR. RICHARD: Thank you, Your Honor.

09:22AM 25 THE COURT: Actually, before you begin your

1 questioning, let me just understand your opinion.

2 So your opinion is that there isn't a need for
3 additional VOC treatment; correct?

09:22AM

4 THE WITNESS: That -- that's correct. There is no
5 agency requiring that.

6 THE COURT: All right. And did you render or did
7 you provide an opinion about the necessity for perchlorate
8 treatment at V-205? You could just answer the question yes or
9 no whether you rendered an opinion in this case on that.

09:23AM

10 THE WITNESS: I'm assuming that's required, yes.

11 THE COURT: All right. Thank you.

12 You could proceed.

13 **CROSS-EXAMINATION**

14 BY MR. RICHARD:

09:23AM

15 Q. Well, you're assuming it's required because you
16 understand that Whittaker has agreed that it has an obligation
17 to pay for perchlorate treatment at V-205?

18 MR. GALLAGHER: Beyond the scope. Lacks foundation.

09:23AM

19 THE COURT: I asked the question very narrowly for
20 that reason to see whether it was within the scope. So I am
21 going to sustain the objection.

22 MR. RICHARD: Your Honor, I'm going to ask for a
23 little leeway, given that this witness is both a percipient and
24 an expert. So I'll lay the proper foundation, if we can come
09:23AM 25 back to that.

1 THE COURT: Yes. That's fine.

2 Q. (BY MR. RICHARD:) And before we get to your
3 opinions, Mr. Simpson, first, you would agree that a GAC
4 system, this granular activated carbon treatment system, is, in
09:23AM 5 fact, an effective way to remove VOCs from groundwater;
6 correct?

7 A. Yes.

8 Q. And before we talk about your expert opinions that
9 you just ran through, I wanted to ask you about some of the
09:24AM 10 comments you made yesterday regarding your history with
11 Whittaker, this site, and dealing with the water agency.

12 And you recall yesterday and then again today
13 Mr. Gallagher asked you a number of questions about Well V-201?

14 A. Yes.

09:24AM 15 Q. Okay. And that's the one that was shut down --
16 when? -- 2010 or 2011, after the agency discovered perchlorate?

17 A. I think I have the exact date in my -- it was
18 removed from service in 2010.

19 Q. Okay. And then you said yesterday and again -- I
09:24AM 20 think you said today but I want to make sure I heard it right,
21 that Whittaker agreed that we needed to put treatment in as
22 quickly as possible. Is that -- did I get that right? Were
23 you talking about V-201?

24 A. I would say the technical representatives for
09:25AM 25 Whittaker agreed that wellhead treatment should be installed as

1 quickly as possible in 201, yes.

2 Q. Okay. The technical representatives agreed to that.
3 But you're aware that Whittaker, Mr. Lardiere didn't agree to
4 that?

09:25AM 5 MR. GALLAGHER: Lacks foundation. Calls for
6 speculation.

7 MR. RICHARD: I'll lay a foundation, Your Honor.

8 THE COURT: Please do.

9 Q. (BY MR. RICHARD:) Yesterday you were asked a number
09:25AM 10 of conversations -- you were asked a number of questions about
11 your conversations with Mr. Lardiere. Do you know who
12 Mr. Lardiere is?

13 A. I do.

14 Q. And you've worked with -- Whittaker has been a
09:25AM 15 client of your firm for -- did you say 17 years?

16 A. Approximately, yes.

17 Q. And your principal contact at Whittaker has been
18 Mr. Lardiere during those 17 years?

19 A. That's correct.

09:26AM 20 Q. And you told us yesterday and again today that you
21 discussed with Mr. Lardiere aspects of V-201 and V-205 when
22 those wells -- when perchlorate was detected in those wells; is
23 that correct?

24 A. Yes.

09:26AM 25 Q. And the well went down -- Well V-201 in 2010. And

1 an agreement wasn't reached between Whittaker and the water
2 agency until 2015; is that correct?

3 A. That's correct.

4 Q. And so is it correct that there are occasions
09:26AM 5 where -- and you were familiar with the -- I think you told us
6 yesterday, you attend technical meetings monthly pursuant to --
7 required by the 2007 settlement agreement between Whittaker and
8 the water agency; is that correct?

9 A. That's correct.

09:27AM 10 Q. And you understood that that 2007 settlement
11 agreement covered Well V-201 perchlorate contamination; is that
12 correct?

13 A. That's correct.

14 Q. So you didn't mean to suggest to the jury that
09:27AM 15 Whittaker -- or Mr. Lardiere agreed that Whittaker should move
16 quickly to pay for treatment of perchlorate at Well V-201, did
17 you?

18 A. We -- we were aware of -- I'm not answering the
19 question directly. I'm sorry.

09:27AM 20 So the question was: Was I aware that Mr. Lardiere
21 was -- I'm sorry. Could you repeat the question?

22 Q. Sure.

23 Yesterday you testified that if we told him he would
24 pay for it, in talking about wellhead treatment, can you tell
09:28AM 25 us what you were referring to? Was that V-201 or is that

1 Well V-205 or was that something else?

2 A. Well, if -- if -- if we believe from a technical
3 perspective that it was appropriate to install wellhead
4 treatment at either 201 or 205, my experience with Mr. Lardiere
09:28AM 5 is that he would support that because it protects him in the
6 long run from additional perchlorate impacts with additional
7 wells.

8 Q. Right.

9 But in the short run, you understand he's concerned
09:28AM 10 about costs?

11 MR. GALLAGHER: Calls for speculation. Lacks
12 foundation.

13 THE COURT: Overruled.

14 Based upon your discussions with him as you've
09:28AM 15 testified.

16 THE WITNESS: Like any businessman, he's going to be
17 concerned about cost. But it's not preventing him from moving
18 forward with projects that protect him in the long run.

19 Q. (BY MR. RICHARD:) Okay. Well, so you knew -- you
09:29AM 20 personally knew, Mr. Simpson, that perchlorate's detected and
21 the agency shuts down Well V-201 in 2010; correct?

22 A. That's correct.

23 Q. And you decide that wellhead treatment is needed
24 quickly; correct?

09:29AM 25 A. I think there's a timing issue here.

1 Q. Okay.

2 A. You know, the agency has a lot of wells.

3 Q. Let me ask you another question.

4 At what point did you decide -- after the well was
09:29AM 5 shut down and the agency lost production from that well in
6 2010, at what point did you decide that wellhead treatment
7 should be installed quickly?

8 A. When the agency decided they were going to move
9 forward with wellhead treatment.

09:29AM 10 Q. Were you aware of the general manager of Valencia,
11 Mr. Masnada, contacting Whittaker and Mr. Lardiere in
12 particular a couple of days before Christmas 2014 requesting
13 that he agree to pay for treatment at Well V-201 that had gone
14 down four years earlier?

09:30AM 15 MR. GALLAGHER: Calls for speculation.

16 THE COURT: Overruled.

17 THE WITNESS: I'm vaguely aware, yes.

18 Q. (BY MR. RICHARD:) So does your vague awareness
19 include Mr. Lardiere telling you that Mr. Masnada was pretty
09:30AM 20 hot under the collar about the delay from Whittaker in agreeing
21 to pay for treatment at Well V-201?

22 A. I don't know the substance of the conversation and
23 whether Whittaker was refusing to fund it. I was always under
24 the impression that if it was needed pursuant to the agreement,
09:30AM 25 the Castaic Lake Water Agency agreement, that Whittaker would

1 fund it.

2 Q. Eventually.

3 A. Pardon me?

4 Q. You were under the impression that Whittaker would
09:31AM 5 eventually fund it?

6 A. I -- I'm not sure about eventually. I -- I --

7 Q. Okay. Are you the -- you're a principal at your
8 firm; is that right?

9 A. I am.

09:31AM 10 Q. And one of your responsibilities is to be
11 responsible for creating new business for the firm?

12 A. That is one of my responsibilities, yes.

13 Q. And Whittaker has at times accounted for as much as
14 10 percent of your business, at least that's what you thought
09:31AM 15 at the time of your deposition? Is that fair?

16 A. That's not what I said. I -- I think what I said in
17 my -- personally in the time that I spend on Whittaker projects
18 is probably 5 to 10 percent of my overall project load.

19 Q. Right.

09:31AM 20 And you have staff that helps you with your overall
21 project load involving Whittaker; right?

22 A. I do.

23 Q. And you have -- you're busier when you're involved
24 in arbitrations and trials. Do you recall talking about that
09:32AM 25 in your deposition?

1 A. Yes.

2 Q. And by "busier," I mean busier for Whittaker.

3 A. That's correct.

09:32AM

4 Q. And in addition to this project, you have at least
5 two other projects involving Whittaker, you or your firm?

6 A. I do.

7 Q. One of those is the Hollister project?

8 A. That's correct.

9 Q. And one of them is the North Hollywood project?

09:32AM

10 A. That's correct.

11 Q. So yesterday you talked about in connection with
12 Well V-205 that Whittaker was taking a wait-and-see approach.
13 Did I get that right?

14 A. That's correct.

09:32AM

15 Q. And wasn't it your understanding at the time that
16 Whittaker had actually agreed in the 2007 settlement agreement
17 to have a certain response when notified of perchlorate
18 detections in that well above a certain level?

19 MR. GALLAGHER: Lacks foundation. Calls for
09:33AM 20 speculation.

21 THE COURT: Overruled.

22 Do you have an understanding of the responsibilities
23 of Whittaker under the 2007 settlement agreement?

09:33AM

24 THE WITNESS: Yes. I am aware that -- that if there
25 is a notice made, that Whittaker was required to do certain

1 things based on that notice.

2 Q. (BY MR. RICHARD:) And one of those things was to
3 meet and confer in good faith to -- to discuss funding of
4 treatment to address the perchlorate contamination?

09:33AM 5 MR. GALLAGHER: Vague as with who.

6 THE COURT: Overruled.

7 THE WITNESS: As I sit here, I don't -- I don't want
8 to guess what the requirements were. So I -- I'm not sure.

9 Q. (BY MR. RICHARD:) And is it fair to say that you
09:33AM 10 were aware at the time that Mr. Matt Stone of the water agency
11 sends a letter to Mr. Lardiere, a formal notice in March 2018,
12 then Mr. Lardiere talks to you about -- was it that letter or a
13 later letter? Or do you recall?

14 A. I think it's the letter -- the notification of
09:34AM 15 perchlorate detections that we discussed.

16 Q. Okay. And you recall that Mr. Stone had to send a
17 follow-up notice to Mr. Lardiere in May 2018 after his letter
18 in March 2018? Were you in the loop on that one?

19 A. I probably saw it, but I -- I don't want to mislead
09:34AM 20 anybody. I don't remember specifically.

21 Q. Sure.

22 And you don't remember any written response from
23 Whittaker between March 18th and -- and mid-May 2018 on V-205,
24 do you?

09:34AM 25 A. Mr. Lardiere had tasked us to come up with a

1 technical response to the detections in 205. And I reported
2 back to him that --

3 Q. I understand -- I don't mean to interrupt, but let's
4 go step by step, if I could.

09:35AM

5 You're not aware of a written response -- let's
6 start with Mr. Lardiere. You didn't help him draft a written
7 response that was actually sent to Mr. Stone between March and
8 May 2018; is that fair?

09:35AM

9 A. We intended to, but we didn't have the supporting
10 information in -- from which to develop the response.

11 Q. So it's your memory that, in fact, no response
12 was -- was sent; correct?

13 A. That I'm aware of, that's correct.

09:35AM

14 Q. For example, Mr. Lardiere did not write back, um, we
15 can't respond to your March request because we're waiting for
16 some information from you even though you've already notified
17 us of the perchlorate contamination? You don't recall that
18 kind of response?

09:36AM

19 A. I don't know what responses Mr. Lardiere would have
20 made. But in the technical meetings, this was an agenda item
21 and it was discussed.

22 Q. Right.

23 But, sir, you were very clear with the agency that
24 in the technical meetings, you had no authority to bind

09:36AM

25 Whittaker; correct?

1 A. That's correct.

2 Q. Mr. Lardiere can bind Whittaker but not you?

3 A. That's correct.

09:36AM

4 Q. In fact, when you testified that if we told him he
5 would pay for it -- and again, you've described here generally
6 that Mr. Lardiere would be willing to pay for wellhead
7 treatment -- that's not even true for Well Q-2 that you talked
8 about, is it?

9 MR. GALLAGHER: Argumentative.

09:36AM

10 THE COURT: Overruled. I'll allow it.

11 THE WITNESS: Well, Whittaker originally paid for
12 wellhead treatment at Q-2.

09:37AM

13 Q. (BY MR. RICHARD:) You recall that there was an
14 arbitration earlier this year regarding treatment for -- was
15 the treatment at the wellhead of Q-2?

16 A. Originally, yes.

17 Q. Okay. Then what happened?

09:37AM

18 A. Then those treatment vessels were -- were repurposed
19 for the V-201 project. And then when perchlorate showed up
20 again at Q-2, additional treatment vessels were installed at
21 the Saugus 1 and 2 treatment plant.

22 Q. Right.

23 And so when perchlorate shows up again at Well Q-2,
24 there were no vessels there to treat it; correct?

09:37AM

25 A. Well, there were vessels there, but they weren't

1 there to treat water from Q-2.

2 Q. Okay. Hadn't the vessels been moved to Well V-201
3 treatment?

4 A. That's correct.

09:37AM

5 Q. And so you -- when perchlorate was again detected at
6 Q-2, wasn't there a point in time where you thought that
7 Whittaker should cooperate in installing treatment for the new
8 detection of perchlorate at Well Q-2?

09:38AM

9 A. In my deposition, I said -- I believed that
10 Whittaker was going to pay for that. I was unaware at that
11 time that there was a legal dispute.

12 Q. Okay. So you thought that Whittaker should pay for
13 it. You testified that Whittaker would pay for it. Whittaker
14 didn't pay for it until there was an arbitration earlier this
15 year. Is that generally consistent with your memory of how
16 those events developed?

09:38AM

17 A. That is generally correct, yes.

18 Q. And you testified in that arbitration regarding Q-2
19 earlier this year; correct?

09:38AM

20 A. I did.

21 Q. And you testified that the estimates from
22 Mr. Abercrombie in that proceeding were too high, in your
23 opinion; correct?

24 A. I actually don't remember that particular testimony.

09:39AM

25 Q. Okay. But you do recall that after the arbitration

1 that Whittaker lost, it paid for, among other things, a
2 containment study, replacement water, and other costs. Do you
3 recall that?

4 A. I recall that, yes.

09:39AM

5 Q. Okay. And -- so would you say that Whittaker more
6 broadly has a wait-and-see approach when it comes to a request
7 by the agency to have Whittaker fulfill its obligations under
8 that 2007 settlement agreement?

09:39AM

9 A. No. I don't think that Q-2 is comparable to 205 or
10 to 201. You know, Q-2 is an alluvial well, and there's very
11 little containment benefit from Q-2. You know, it's the
12 alluvial -- alluvial aquifer, the shallower aquifer.

09:40AM

13 The containment benefit is from the Saugus
14 production wells. And that would be Saugus 1 and 2, V-201, and
15 V-205.

09:40AM

16 And so when I told -- when I said yesterday that --
17 that I -- that if we told Whittaker from a -- from --
18 Mr. Lardiere from a technical perspective that it -- it's in
19 his best interest to install treatment at 205, I believe he
20 would listen to us and he would move forward with it.

09:40AM

21 Q. There's -- so let me -- let me understand that.

22 So if it's -- if Whittaker ended up paying for
23 treatment at Well Q-2 because it had an obligation to do so --
24 is that generally your understanding?

09:40AM

25 A. That's correct.

1 Q. And you just testified, but the treatment at Q-2 was
2 in the alluvial and not Saugus; therefore, it's not really
3 providing a containment benefit to Whittaker. Did I hear that
4 right?

09:41AM

5 A. Well, that's -- I mean, from a technical
6 perspective, it's just a different -- in a different location.

7 Q. Okay. So in your discussions with Mr. Lardiere, did
8 you have that discussion, that, well, this well really -- if we
9 provide treatment, that won't really help us on containment so

09:41AM

10 let's take a wait-and-see approach on that one --

11 A. No.

12 Q. -- until we get sued?

13 A. No. We never took that approach for Q-2.

14 Q. Okay. Do you recall, you testified to a number of
15 technical meetings. It's fair you don't recall over the last
16 many years -- you don't take notes at those meetings, do you?

09:41AM

17 A. No, I don't.

18 Q. Okay. And --

19 A. Well, let me back up. I keep some notes, but I'm
20 not a great notetaker.

09:41AM

21 Q. Do you know if you ever provided those notes in the
22 course of this litigation to anyone?

23 A. I'm not sure that I did.

24 Q. You do recall -- you were talking about a permit for
25 V-201. Do you recall attending one or more meetings with

09:42AM

1 Matt Stone, the general manager of the water agency, regarding
2 that topic? Correct?

3 A. I'm sorry. Could you repeat the question?

4 Q. Sure.

09:42AM

5 You recall attending one or more meetings with
6 Matt Stone, these monthly technical meetings, where the issue
7 of a permit for V-201 came up?

8 A. That's correct.

09:42AM

9 Q. And you recall one meeting where he let you know
10 that getting a permit for V-201 was a big priority so that the
11 well could be used for drinking water; correct?

12 A. That's correct.

09:42AM

13 Q. And he was -- I forget exactly. Would it be fair to
14 say he was expressing concern or anger at that point in the
15 meeting, that that well was not available for drinking water?

16 A. It appeared to me that he was upset with his own
17 consulting team in delaying providing the response DDW needed
18 to issue the permit for that well.

09:43AM

19 Q. And the well for V-201 has -- had perchlorate
20 treatment available since -- what? -- 2017?

21 A. That's correct.

22 Q. And construction was completed, I think you said,
23 sometime in 2017?

24 A. That's correct.

09:43AM

25 Q. And you would agree that, even though that well has

1 perchlorate treatment, which was the original reason the well
2 was shut down, it still does not have a permit from DDW to
3 serve drinking water? Did I get that right?

4 A. That's correct.

09:43AM

5 Q. And do you know whether one of the reasons -- first
6 of all, you know that -- I think you testified to this
7 yesterday -- that the aquifer from which that well draws water
8 has been deemed to be an extremely impaired water source?

9 A. I'm aware of that, yes.

09:43AM

10 Q. And one of the reasons is because of VOCs? Do you
11 know one way or the other?

12 A. I -- I think it's for perchlorate. I'm not sure
13 if -- if VOCs are driving that designation as well.

09:44AM

14 Q. You testified around this morning, I think around
15 9:00 o'clock when Mr. Gallagher was asking you some questions
16 about the process, as to whether someone ever articulated a
17 concern about VOCs. You testified that that was something you
18 understood that they had to deal with. Do you recall that?
19 "They" being the water agency.

09:44AM

20 A. Well, there's low-level detections -- there were
21 in -- at 201. TCE has been detected, generally right at the
22 detection limit. Very low concentrations, nothing above the
23 MCL.

09:45AM

24 Q. Sir, I'm just asking you about your testimony from
25 less than an hour ago. You were talking about a meeting

1 involving V-201 and VOCs. And I thought I heard you say, yes,
2 I understood that the -- that VOCs were something the agency
3 had to deal with.

09:45AM 4 A. Well, they have to deal with all contaminants, both
5 naturally occurring and -- and anthropogenic, or man-made
6 compounds, yes.

7 Q. Sir, you understand that in the -- at least from
8 your discussions with the agency and with DDW, that VOCs are
9 something that the water agency has to deal with in terms of
09:45AM 10 their discussions with DDW and trying to get Well V-201 back
11 online; isn't that correct?

12 A. That's correct.

13 Q. All right. Thank you.

14 Now let's turn to your role as a cost estimator
09:45AM 15 expert for Whittaker.

16 Is it fair to say that you do not routinely prepare
17 cost estimations for water treatment facilities?

18 A. Actually, I -- I do quite a bit of water treatment
19 and prepare estimates for clients.

09:46AM 20 Q. You recall our discussion at your deposition where
21 you talked about inspecting and reviewing other -- other folks'
22 cost estimates?

23 A. What I said in my deposition is that I wouldn't
24 consider myself a -- a sharp pencil engineer, the one that
09:46AM 25 would design the piping, you know, specify the pumps and, you

1 know, the actual tanks. But the concept of -- of, you know,
2 how we would treat the water, what the appropriate treatment
3 method would be is -- is what I do.

4 Q. Right.

09:46AM

5 But focusing on the cost estimation, as a discipline
6 and exercise, is it fair to say you have not heard of something
7 called the equipment factored approach for cost estimation
8 before this case?

09:47AM

9 A. I don't -- I don't use that in my practice. So, no,
10 I -- I was not familiar with that.

11 Q. You don't teach courses in cost estimation; is that
12 fair?

13 A. I do not.

09:47AM

14 Q. You do not routinely use the principles or guidance
15 from a group called, you know, AACE, the group of cost
16 estimating engineers, do you?

17 A. I'm familiar with the document, but I don't use it
18 in my estimating practice.

09:47AM

19 Q. And you're not offering the opinion here today that
20 the approach, the methodology used by Dr. Najm is not the
21 generally accepted approach used in the industry, are you?

22 A. Well, I think it is a method of coming up with cost.

23 Q. Okay.

09:47AM

24 A. But it is -- because of the various contingencies
25 that are added to it, it -- it increase -- it results in a --

1 in a very high cost relative to a different approach in
2 executing a project, more of a design-build approach that can
3 save, you know, substantial money.

4 Q. Right. Let's just go step by step, though.

09:48AM

5 In terms of the methodology Dr. Najm uses, you would
6 agree that's a recognized approach to address cost estimation,
7 especially at early stage of project consideration; is that
8 fair? You said it's an approach.

09:48AM

9 A. I'm not sure I agree with the early stage of project
10 execution because this project is pretty well defined.
11 Installing wellhead treatment at an existing well site is -- is
12 a fairly straightforward effort.

13 Q. No, I understood you to say that. And we'll get to
14 those pieces.

09:49AM

15 But your approach in this case was not to follow the
16 principles set forth by any recognized group of cost estimating
17 experts or engineers; correct? There's no published literature
18 to support your approach of starting with a project that was
19 completed four years ago. Can we agree on that?

09:49AM

20 A. I -- I don't know that I would say that it's not an
21 approach that would be accepted or recognized by others in my
22 profession. I mean, I have a project that was recently
23 completed. To me, that's a much more -- that provides much
24 more certainty about what the potential cost would be rather
09:49AM 25 than using an approach that really has no familiarity with the

1 site itself, with, um, what's been done recently and doesn't
2 take into account the design-build approach that we did for
3 201.

4 Q. So let's talk about that.

09:50AM

5 So for your approach in this case, as you've just
6 described it, was to start with a project completed four years
7 ago that did not involve buying any new vessels and did not
8 involve GAC treatment; is that right?

9 A. Well, that --

09:50AM

10 Q. Is that right?

11 A. No. Not necessarily. I mean, they are -- the
12 projects are different, indeed. And we accounted for that in
13 the estimate I put together.

09:50AM

14 MR. RICHARD: Your Honor, if I could just get an
15 answer, if possible, to that question. And I'll ask it again.

16 Q. (BY MR. RICHARD:) Your approach was to start with
17 the cost for a project completed four years ago, for a project
18 that did not require purchasing new vessels and that did not
19 involve GAC treatment; is that correct?

09:51AM

20 THE COURT: You can answer that yes or no.

21 THE WITNESS: That's correct.

22 Q. (BY MR. RICHARD:) And then you took that number and
23 you made some adjustments and extrapolations; correct?

24 A. That's correct. Based on --

09:51AM

25 Q. I understand.

1 A. Based on new information that we received from --
2 from vendors, including the -- the largest expense are the
3 tanks.

4 Q. Right.

09:51AM 5 A. The pressure vessels.

6 Q. Okay. And on that point, you and Dr. Najm agree
7 that, at least as of a few months ago, those vessels are about
8 \$200,000 each?

9 A. That's correct.

09:51AM 10 Q. You haven't checked the current market as of today
11 for those vessels, if you wanted to get those delivered in the
12 next month or so, have you?

13 A. I -- I have not checked recently. That estimate, I
14 think, from our vendor was in April of this year.

09:52AM 15 Q. Right.

16 And you're aware that there's some turmoil in the
17 markets for the delivery of goods, including large metal
18 vessels manufactured somewhere?

19 A. I -- I'm aware of the supply chain challenges, yes.

09:52AM 20 Q. And one of the wells you mentioned but I don't
21 recall you going into much detail on, something about treatment
22 for an end well. Do you recall that?

23 A. I think -- yes. There are -- I think there are
24 three end wells that have treatment.

09:52AM 25 Q. Okay. And you're aware -- or do you know whether

1 any of those treatment systems involved a six-vessel
2 configuration?

3 A. I don't know much about that, just aware that they
4 were -- that project was recently completed.

09:52AM

5 Q. Okay. And before coming -- well, are you aware --
6 assume that Dr. Najm testified that in that project for just
7 those six vessels cost about \$7.5 million. Do you have any
8 information to suggest that he was incorrect in that regard?

09:53AM

9 A. I have no way of knowing one way or another what was
10 included and how relevant that is to a wellhead treatment
11 project.

12 Q. Okay. I'm just asking you about the \$7.5 million.
13 You don't know one way or the other?

14 A. I just don't know.

09:53AM

15 Q. And this approach you had in this case of looking at
16 a project completed four years ago that did not involve
17 purchasing new vessels and then making some adjustments and
18 extrapolations, you would agree that that approach to cost
19 estimation is not the standard approach?

09:53AM

20 A. I -- I'm not sure that there is a standard. It's
21 what -- what is -- what is the number you should rely on or
22 would be appropriate for executing a project like this. And
23 to -- to me, if we take a design-build approach, similar to
24 what we did at 201, we could realize costs similar to what my
09:54AM 25 estimate is in my report.

1 Q. Right.

2 My question is just whether you would agree that
3 that was not a standard approach.

4 A. It's not the approach that Dr. Najm used but --

09:54AM 5 Q. That wasn't my question, Mr. Simpson.

6 MR. RICHARD: Your Honor, I would propose that we
7 read to the witness from his deposition. I believe that was
8 delivered, probably without a spine label for Your Honor, but
9 page 46, line 17 through line 3, page 47.

09:54AM 10 MR. GALLAGHER: Page 46, line?

11 MR. RICHARD: Line 17.

12 MR. GALLAGHER: No objection.

13 THE COURT: You may proceed.

14 Q. (BY MR. RICHARD:) And you recall giving a
09:55AM 15 deposition just a few weeks ago in this case?

16 A. I -- I recall.

17 Q. And you were asked -- I don't know if you have this.
18 Okay. I'll just read it to you.

19 "QUESTION: Did you make adjustments and
09:55AM 20 extrapolations to come up with your cost estimates?

21 "ANSWER: I did.

22 "QUESTION: And as you sit here, can you point
23 to any literature that says an approach that begins
24 with costs of a project at a different point in time
09:55AM 25 to treat a different chemical in the groundwater than

1 that -- that that is an acceptable approach to cost
2 estimation, this adjustment and extrapolation
3 approach.

4 "ANSWER: I would say it is a nonstandard
09:55AM 5 method," period. And then you went on to explain your
6 answer.

7 That was correct at the time you testified a few
8 weeks ago, that your approach in this case, you would say, was
9 a nonstandard approach?

09:55AM 10 A. That's what I testified to, but it doesn't make it
11 an unreliable number. In fact, to me, it makes it even more of
12 a reliable number because it was what was actually realized at
13 a recent project.

14 Q. So your \$11 million all in for all of the four
09:56AM 15 treatment projects, that does not include any amount for
16 management costs; is that correct? You don't have a line item
17 for that?

18 A. It would be a similar level of management of what
19 occurred at V-201.

09:56AM 20 Q. Legal fees, you don't have a line item for legal
21 fees?

22 A. Again, it's not line-itemed out because it's based
23 on the actual or realized cost that Whittaker paid for 201.

24 Q. And you do not include a line item for
09:56AM 25 contingencies; correct?

1 A. As I said earlier, the contingency's built into the
2 starting point.

3 Q. Right.

4 It's your view that whatever supply, pricing,
09:57AM 5 project, construction, contingencies could occur in the future
6 for these four projects going forward have all been accounted
7 for in that V-201 project from four years ago; correct?

8 A. Well, it's -- it's -- it's not just the project four
9 years ago. It's also the Q-2 project that we -- that Whittaker
09:57AM 10 funded. And we're aware of those costs, and those were used as
11 well. And that was a much more recent project.

12 Q. Right.

13 But you would agree that you're not taking into
14 account new contingencies in the future that could arise either
09:57AM 15 because of site conditions, supply chain issues, increased
16 construction costs?

17 A. We assume that those contingencies are built into
18 the estimate, that's correct.

19 Q. Now, your firm does cost estimates from time to
09:57AM 20 time; right?

21 A. We do.

22 Q. And it typically includes a line item for
23 contingencies; correct?

24 A. Often. Or if there's no contingency, we let the
09:58AM 25 client -- we make them aware of that.

1 Q. Doesn't your firm typically include contingencies
2 because stuff can happen, stuff you didn't expect?

3 A. That's correct.

09:58AM

4 Q. You can have unexpected conditions during execution
5 of the project, such as this. Would you agree with that?

09:58AM

6 A. I would. Similar to what happened at Q -- at V-201
7 where about a half a million dollars of extras was -- was
8 incurred -- were incurred. And that's why we used that
9 starting point as our -- that estimate of what was actually --
10 I'm sorry. We actually used what was realized at 201 as our
11 starting point in our estimate.

12 Q. And how many vessels did you estimate would be
13 needed to install GAC treatment at Saugus 1 and Saugus 2?

14 A. Four vessels.

09:59AM

15 Q. And the consultant that you reached out to to check
16 on prices, didn't she identify that for the GAC treatment that
17 would be needed, given the volumes being pumped, that you would
18 need six vessels?

09:59AM

19 A. I -- I know that this came up in my deposition. And
20 I went back and -- and checked and consulted with my -- one of
21 the engineers that works for me, Miae Jeon.

22 MR. RICHARD: Your Honor, if I could get an answer
23 to the question first. I'm just asking about -- I'll rephrase
24 it.

09:59AM

25 Q. (BY MR. RICHARD:) Before you prepared and provided

1 your report, you reached out to another consultant regarding
2 costs for these GAC vessels; correct?

3 A. That's correct.

09:59AM

4 Q. And at that time, that consultant that you reached
5 out to identified, based on the metrics of ten minutes' contact
6 time and the pumping rates for Saugus 1 and 2, that you would
7 need six vessels, three systems and lead-lag; is that correct?

8 A. To meet the -- the standard ten-minute detention
9 time, that's correct.

10:00AM

10 Q. Okay. So you do have other folks in your firm -- I
11 think you mentioned folks in your deposition -- in Sacramento
12 and Houston who routinely prepare cost estimates for these
13 types of projects?

14 A. That's correct.

10:00AM

15 Q. And your firm manages these types of projects;
16 correct?

17 A. Well, could you define "these types of projects"?

18 Q. Projects involving GAC treatment or removal of
19 chemicals from groundwater.

10:00AM

20 A. That -- that's correct.

21 Q. Okay. And -- but is it fair to say that neither you
22 or your firm would be willing to guarantee you're staying
23 behind the \$11 million number you shared with us, in part,
24 because it does not include any contingencies?

10:01AM

25 A. That's not correct.

1 Q. Is it correct that your firm -- that's what? GSI
2 Consulting?

3 A. GSI Environmental.

4 Q. Environmental.

10:01AM 5 For the estimate you came up with in this case, your
6 firm is not submitting that as a bid or guaranteeing that it
7 could deliver these four treatment projects for \$11 million?
8 You haven't done that; is that fair?

9 A. I have not done that.

10:01AM 10 Q. So you're not -- your firm would not guarantee the
11 \$11 million based on your cost estimate?

12 A. We're not in the fixed fee guarantee business. So,
13 no, that's not what our firm does.

14 Q. Right.

10:01AM 15 But if the jury were to use your number of
16 \$11 million, then my client, the water agency, would be capped
17 at \$11 million, regardless of whatever market conditions or
18 uncertainties occurred after that; right?

19 A. I suppose so, yes.

10:02AM 20 MR. RICHARD: That's all I have, Your Honor.

21 THE COURT: Mr. Gallagher.

22 **REDIRECT EXAMINATION**

23 BY MR. GALLAGHER:

24 Q. The end wells that Mr. Najm relied on, do you
10:02AM 25 understand what kind of -- what chemical it was treating?

1 A. They were originally installed to treat PFAS.

2 Q. So not perchlorate, not VOCs; correct?

3 A. Originally, they were installed to treat PFAS

4 detections in those wells. Subsequent to that, low levels of

10:02AM 5 perchlorate have shown up in those wells. And so they also are

6 treating for -- for perchlorate.

7 Q. And in the end well situation, that scenario, the

8 setup, it's not a single wellhead treatment; correct?

9 MR. RICHARD: Objection. Leading, Your Honor.

10:03AM 10 THE COURT: Sustained.

11 Q. (BY MR. GALLAGHER:) Do you know if it's a single
12 wellhead treatment at the end well project?

13 A. There are three wells that are tied together, and
14 there's a single treatment plant. So it -- it appears to me

10:03AM 15 that that is much more -- that's much more similar to the
16 Saugus 1 and 2 project than it is the V-201 wellhead treatment
17 project.

18 Q. Fair enough.

19 Have you -- we talked briefly about this cost

10:03AM 20 estimating classification system. Are you familiar with the
21 AACE guide or booklet?

22 A. I am.

23 Q. Is that the Bible for cost estimating?

24 A. Well, we prepare cost estimates all the time for our

10:03AM 25 clients and we don't -- we don't use that.

1 Q. So --

2 A. It is -- it's a tool people could use. But in our
3 practice, we don't.

4 Q. It's not the only tool to use; correct?

10:04AM 5 A. No.

6 Q. And your practice for your opinion today, how
7 would -- how would you describe your analysis in terms of
8 reliability?

9 MR. RICHARD: Objection. Vague, Your Honor.

10:04AM 10 THE COURT: Sustained.

11 Q. (BY MR. GALLAGHER:) There's a number -- taking a
12 step back. When you looked at 201 and Q-2, you developed
13 these -- what did you rely on to come up with a total cost?

14 A. The invoices that Whittaker paid.

10:04AM 15 Q. And did those invoices involve cost overruns?

16 A. They did.

17 Q. Okay. And you said you reached out to vendors;
18 correct?

19 A. Correct.

10:04AM 20 Q. And that -- those vendors in connection with
21 installing wellhead treatment; correct?

22 A. Yes.

23 Q. All right. And what did you discuss with those
24 vendors? What were the costs that you may have discussed?

10:05AM 25 A. Uh, the cost for treatment vessels.

1 Q. And did you -- when you talk about design-build
2 approach, in your opinion, why is that more reliable than what
3 Mr. Najm did in his cost estimating?

10:05AM 4 A. Well, I guess the best analogy would be if you buy a
5 car, you can go to a dealership and buy a car. It's hard to do
6 these days, but you could if you wanted to. Or you could pay
7 someone to design a car and then you could buy the various
8 parts of that car and then pay someone to assemble the car.
9 And that would -- you know, it could be done and it could --
10:05AM 10 you get a car at the end.

11 But that kind of shows you the difference between
12 the approach of hiring a contractor that does this day in, day
13 out, you know, they -- they -- it's their main business, is to
14 install these vessels. And so they do it very effectively and
10:06AM 15 it doesn't require a tremendous amount of engineering versus a
16 more -- you know, I would say an approach similar to what we
17 did at the Saugus 1 and 2 treatment plant which involved
18 preparing very detailed plans and specs, put it out to bid, a
19 ton of construction oversight. Some of that was needed because
10:06AM 20 of the complications of being in the public right-of-way and
21 having to install pipelines.

22 Q. Understood.

23 With Mr. Najm's estimates, does he still have to
24 actually go out and put this project to bid in order -- in
10:06AM 25 order to actually install this wellhead treatment? In other

1 words, Mr. Najm is not building this wellhead treatment?

2 A. No. No. He is -- he -- the approach he took would
3 be much more similar to what we did for Saugus 1 and 2.

4 Q. So in order for the agency to actually know what it
10:07AM 5 may cost, would they have to actually put it out to bid, then?

6 A. That's correct.

7 Q. And then they'd actually have to go through and
8 realize the cost that would actually incur to install wellhead
9 treatment; is that true?

10:07AM 10 A. That's correct.

11 Q. Until -- until they do, how reliable are, then,
12 Mr. Najm's estimates, in your opinion?

13 MR. RICHARD: Objection. Vague, Your Honor.

14 THE COURT: Sustained.

10:07AM 15 Q. (BY MR. GALLAGHER:) Going back to the DDW, I think
16 counsel brought it up in your discussions about the VOCs. Do
17 you recall that, that it was a concern?

18 A. Correct.

19 Q. Can you put that into context? Why were the VOCs a
10:07AM 20 concern to the DDW, as you understand it? And I'll hone you
21 in, did it involve the 97-005 application process?

22 A. That's correct. It requires a complete source water
23 assessment.

24 Q. And so in that complete source water assessment,
10:08AM 25 they are considering VOCs; correct?

1 A. That's correct.

2 Q. They also have to factor in perchlorate, I assume;
3 correct?

10:08AM

4 MR. RICHARD: Objection. Leading. Lacks
5 foundation.

6 THE COURT: Sustained.

10:08AM

7 Q. (BY MR. GALLAGHER:) In terms of your discussions
8 with the agency and the 97-005 process, did they discuss the
9 impact that a severely impaired aquifer has in this process, in
10 this application, permit application process?

11 A. Not -- I mean, we're already engaged in the 97-005
12 permitting process. And I should -- not Whittaker but the
13 water agency. So, no, we didn't talk about in my discussions
14 with them -- we -- we already knew that that was going on.

10:09AM

15 Q. Right.

16 And in your discussions with the DDW, do you have an
17 understanding of the chemicals that are being discussed as part
18 of the 97-005 process?

10:09AM

19 MR. RICHARD: I'm going to object as beyond the
20 scope, Your Honor, and 403 at this point.

21 THE COURT: I'm going to sustain it on 403. We've
22 had lots of discussions concerning this issue.

23 MR. GALLAGHER: Sure enough.

24 Nothing further.

10:09AM

25 THE COURT: Mr. Richard.

RECROSS-EXAMINATION

BY MR. RICHARD:

Q. You were just asked about whether any of these treatment facility projects have been put out to bid. You would agree that, until there are engineering plans unique to each site, the project can't be put out to bid -- correct? -- in an effective way; is that fair?

A. I think a plan showing the configuration of the tanks would be needed. But if you take a design-build approach, the contractor can do a lot of that work. You don't necessarily have to do all the engineering upfront. You get the -- you get the benefit of the contractor, their experience, the fact that this is what they do day in, day out to -- to do a lot of that engineering work.

Q. In referring to Dr. Najm, you didn't mean to suggest that day in, day out he's not working with this and many other water agencies on these exact type of projects, did you?

A. I don't know what he does. I'm sorry.

Q. Oh, okay.

MR. RICHARD: That's all I have, Your Honor.

THE COURT: All right. You're excused. Please watch your step going down.

THE WITNESS: Thank you.

THE COURT: We're still on the defense case. Your next witness?

1 MR. BLUM: Your Honor, the defendants would call
2 Mr. B.J. Lechler.

3 THE COURT: Very well. Please present him.

4 THE COURTROOM DEPUTY: Good morning, sir. Would you
10:11AM 5 please come forward. Sir, would you please walk around, stand
6 up on the witness platform. Thank you.

7 Would you please raise your right hand to be sworn.

8 Sir, do you solemnly swear that the testimony you
9 shall give in the cause now before this Court shall be the
10:11AM 10 truth, the whole truth, and nothing but the truth, so help you
11 God?

12 THE WITNESS: I do.

13 THE COURTROOM DEPUTY: Thank you. Please be seated.

14 Sir, for the record, would you please state your
10:11AM 15 name and then spell your last name.

16 THE WITNESS: Benjamin Lechler, L-e-c-h-l-e-r, also
17 referred to as B.J., which are my initials, Benjamin James.

18 THE COURT: Please remove your mask, sir, and speak
19 into the microphone.

10:12AM 20 And you may begin your direct examination.

21 MR. GEE: Your Honor, just -- can we -- can my
22 associate approach the witness to give him the witness binder?

23 THE COURT: Yes.

24 MR. BLUM: Your Honor, while that's being done, are
10:12AM 25 we going to be taking our normal break at the normal time?

1 THE COURT: Yes.

2 MR. BLUM: Thank you.

3 THE COURT: Mr. Blum?

4 MR. BLUM: Mr. Lechler, are you ready?

10:13AM

5 **BENJAMIN LECHLER,**

6 **DEFENDANT'S WITNESS, WAS SWORN AND TESTIFIED AS FOLLOWS:**

7 **DIRECT EXAMINATION**

8 BY MR. BLUM:

9 Q. Mr. Lechler, where do you currently work?

10:13AM

10 A. Jacobs.

11 Q. And what is Jacobs?

12 A. It's an engineering firm.

13 Q. And what do you do there?

14 A. I'm a hydrogeologist.

10:13AM

15 Q. And have you ever done work for the Santa Clara
16 Valley Water Agency or any of its predecessors?

17 A. I have, yes.

18 Q. When did you start, sir?

19 A. I believe the first project that I worked on

10:13AM

20 directly for the agency would have been in the late 2013 or
21 early 2014 time frame.

22 Q. Prior to that, did you work on -- for the Army Corps
23 of Engineers on projects that related to the water agency?

24 A. I did, yes.

10:14AM

25 Q. And the -- what was that project?

1 A. It was a -- the name of the project was officially
2 the Eastern Santa Clara Sub-basin Groundwater Investigation, I
3 believe. But it was -- it was essentially related to regional
4 perchlorate contamination in the Santa Clarita Valley.

10:14AM 5 Q. You were actually a contractor for the Army Corps;
6 correct?

7 A. Correct. Yes.

8 Q. But half of the funding for the project was done by
9 the water agency; right?

10:14AM 10 A. The water agency, I believe, provided in-kind
11 matching funding for that project, yes.

12 Q. Now, as of the last month or two, do you have any
13 responsibilities relating to the water agency?

14 A. The last month or two, yeah. I -- I've worked on
10:14AM 15 some other projects related to groundwater modeling in the
16 recent past.

17 Q. Prior to your testimony today, did you meet with
18 anybody at the water agency to prepare?

19 A. Anybody at the water agency?

10:15AM 20 Q. Or their counsel.

21 A. Uh, I -- I spoke with Nossaman who is my counsel as
22 well.

23 Q. And what did you guys talk about?

24 MR. GEE: Objection. Attorney-client privilege.

10:15AM 25 THE COURT: Sustained.

1 Q. (BY MR. BLUM:) Is the firm that Mr. Gee represents
2 providing you counsel in this case?

3 THE COURT: He responded "Yes." Ask another
4 question, please.

10:15AM 5 Q. (BY MR. BLUM:) Did you review your deposition
6 before you testified?

7 A. I did, yes.

8 Q. Why?

9 A. Because I figured it was relevant to my testimony.

10:15AM 10 Q. Okay. Sir, do you recall in approximately October
11 of 2010 having a conversation with James Leserman concerning an
12 investigation that might be done into the source of VOC
13 contamination?

14 A. I can't recall a specific conversation, but we had
10:16AM 15 conversations on that -- on that subject.

16 Q. All right. One of the -- in one of the notebooks in
17 front of you, there's an Exhibit 1410. If you could take a
18 look at it, please.

19 A. Uh, I need to figure out how to --

10:16AM 20 Q. Sure.

21 A. -- get to the appropriate one. So the exhibits here
22 go up to 1409.

23 THE COURT: There should be another volume.

24 THE COURTROOM DEPUTY: May I assist, Your Honor?

10:16AM 25 THE COURT: Please do. Thank you.

1 THE COURTROOM DEPUTY: He's correct. The last
2 exhibit here is 1409.

3 THE COURT: Maybe you can move to another subject,
4 please.

10:17AM 5 Q. (BY MR. BLUM:) In 2015, did you prepare a written
6 report of an investigation you did?

7 A. Yes.

8 Q. And that's -- isn't that in the binder that you were
9 given by counsel for -- by the water agency?

10:17AM 10 A. I have not looked at it yet so -- I can look.
11 And -- and there's two reports that I authored in 2015. One
12 was for the agency, and one was for the Army Corps of
13 Engineers. I assume you're referring to the one for the
14 agency?

10:17AM 15 Q. Yes, sir.

16 What's the title of that report?

17 A. Saugus Formation Volatile Organic Compound
18 Investigation Report.

19 Q. Okay. And, sir, are you the author of that report?

10:17AM 20 A. Yes.

21 Q. Okay. And prior to that report being finalized, did
22 you send a copy to the water agency so they could comment on
23 it?

24 A. I believe I did, yes.

10:18AM 25 Q. And they did comment on it; right?

1 A. I believe I received comments. I don't recall who
2 from. But yeah, I received some comments.

3 Q. And those comments were incorporated into the final
4 version?

10:18AM

5 A. I would believe that we addressed the comments in
6 some way, yes.

7 Q. Okay. And the report was prepared for the agency,
8 but you were aware that it was being -- that it was probably
9 going to be sent to the Department of Toxic Substances Control
10 also?

10:18AM

11 A. Yes.

12 Q. And, sir, at the time you wrote that report and sent
13 it off as the final form to the agency, you believed that there
14 was nothing in the report that was incorrect or misleading;
15 isn't that right?

10:18AM

16 A. That's correct.

17 Q. Okay. And at the time of your deposition, you also
18 believed that there was nothing in the report that was
19 incorrect or misleading; is that correct?

10:19AM

20 A. That's correct.

21 Q. And when was your deposition, sir?

22 A. I don't remember the exact date. I believe it was
23 in 2019 at some point.

24 Q. Does September 25th, 2019, refresh your
25 recollection?

10:19AM

1 A. That sounds appropriate.

2 Q. Okay. Alrighty.

3 And wasn't the conclusion of the report that it was
4 possible that either SIC or Whittaker was the source of the
10:19AM 5 VOCs in the wells at issue but that more information needed to
6 be gathered before any further conclusions could be made?

7 A. Uh, can I refer to the report?

8 Q. Well, do you know without referring to the report,
9 Mr. Lechler?

10:19AM 10 A. I -- I know in general, um, but I'm not exactly sure
11 how it was phrased in the report. And I prefer to go with how
12 my report was prepared as far as the phrasing of --

13 Q. Well, regardless of the phrasing, was the gist of
14 your conclusion as to who was the source, was that you could
10:20AM 15 determine possible sources but that you needed to gather more
16 information to go anywhere beyond possible?

17 A. The gist of the conclusion was that Whittaker was
18 the source of TCE to the Saugus wells, likely source of PCE to
19 the Saugus wells, and that Saugus Industrial Center is also a
10:20AM 20 potential source. But in order to characterize the VOCs from
21 either site, there was additional work that was recommended for
22 both facilities to conduct to understand the full extent of
23 their VOC contamination.

24 MR. BLUM: If we could go to page 61, line 5,
10:20AM 25 through 62, line 1 of Mr. Lechler's deposition, please.

1 MR. RICHARD: Whoa. Hold on. Your Honor?

2 THE COURT: Yes. One moment, please.

3 MR. BLUM: I'm waiting, Your Honor, for them.

4 MR. RICHARD: No, it came up.

10:21AM 5 THE COURT: Please don't respond, Mr. Blum.

6 MR. BLUM: I apologize, Your Honor.

7 MR. RICHARD: May I have the page and line again? I
8 didn't catch it from Mr. Blum.

9 MR. BLUM: 61, line 5, through 62, line 1, with a
10:21AM 10 break to excise out counsel objections.

11 MR. GEE: Objection. Improper impeachment.

12 THE COURT: One moment.

13 I'm going to sustain the objection.

14 Q. (BY MR. BLUM:) Mr. Lechler, did you -- did you
10:22AM 15 conclude that it was only possible that the VOCs were caused by
16 either SIC or Whittaker?

17 A. What I just said prior to this was -- was what I
18 believe is -- how it's phrased in the report. During my
19 deposition, I may have said that it was a possibility, but I
10:22AM 20 stand by what's in my report.

21 Q. Would you agree with me in your deposition when you
22 were asked the question, you said that what you concluded was
23 that it was possible?

24 MR. GEE: Objection. Asked and answered.

10:22AM 25 THE COURT: I'm going to sustain this on 403 grounds

1 as well, given its probative value.

2 Q. (BY MR. BLUM:) Sir, wasn't the conclusion -- didn't
3 you conclude that you used the words -- that you couldn't even
4 say that it was probable that it was Whittaker?

10:23AM 5 THE COURT: Are you talking about his report or his
6 deposition?

7 Q. (BY MR. BLUM:) Your deposition. Didn't you say
8 that you couldn't even conclude that it was probable that it
9 was Whittaker?

10:23AM 10 A. Again, I may have said something in my deposition,
11 but I do stand by what's in my report here.

12 Q. Did you say in your deposition that you couldn't
13 even say that it was probable?

14 THE COURT: Ask another question, please.

10:23AM 15 Q. (BY MR. BLUM:) Sir, didn't you describe Whittaker
16 and SIC as potential sources?

17 THE COURT: Again, is this the deposition you're
18 talking about?

19 MR. BLUM: Yes, sir.

10:23AM 20 THE WITNESS: I may have said that in my deposition,
21 yes.

22 Q. (BY MR. BLUM:) Okay. Today do you believe that
23 Whittaker is more than a potential source of VOCs?

24 A. I have not -- excuse me. I have not seen any
10:23AM 25 information since I prepared this report to change any of the

1 conclusions of the report. And as I said before, the report
2 does state that Whittaker is a source of TCE in the two Saugus
3 wells. And I -- I stand by the findings of the report.

10:24AM 4 Q. All right. Now, if you look at the report, if you
5 can go to page 1, please, Exhibit 34.

6 A. Page 1?

7 Q. I'm sorry. It's not page 1. It's page 34.6.

8 A. Okay.

10:24AM 9 Q. And you see where it says the section under Purpose
10 and Objectives?

11 MR. GEE: Excuse me, Counsel. Did you say 34.6 or
12 34.8?

13 MR. BLUM: .6, Purpose and Objectives.

10:24AM 14 THE WITNESS: Yeah, I have different numbering in
15 the hard copy that I have up here.

16 Q. (BY MR. BLUM:) All right. Well, it's --
17 Introduction, Section 1, Section 1.1.

18 A. I see it on the screen here, yes.

10:25AM 19 Q. All right. And this is a section you wrote;
20 correct?

21 A. Yes.

22 Q. And the purpose of this section was to identify why
23 the report was being written; correct?

24 A. I believe so. Yes.

10:25AM 25 Q. And didn't you write in the second-to-the-last

1 sentence -- do you see where it says, "The purpose of this
2 investigation"? Can you read that -- that sentence, please?

3 A. "The purpose of this investigation is to identify
4 potential sources of VOCs detected in the Saugus formation
10:25AM 5 wells."

6 Q. So the reason the report was written was to identify
7 potential sources; correct?

8 A. That's what it says, yes.

9 Q. And was that why you wrote the report?

10:25AM 10 A. Yes. That was the object -- one of the objectives
11 of the report.

12 Q. Wasn't it true that was your understanding that,
13 after this report was written, there was going to be a
14 follow-up report to deal with something -- who was -- something
10:26AM 15 beyond a potential source?

16 MR. GEE: Objection. Lacks foundation.

17 THE COURT: You can answer the question. Did you
18 have an understanding on that subject?

19 THE WITNESS: I did not. To me, this was a
10:26AM 20 standalone document.

21 Q. (BY MR. BLUM:) All right. Now, in Section 3 of the
22 report where it says -- at least my page 34.14, but it's
23 page 3-1, if that helps.

24 What was the purpose of that section?

10:26AM 25 A. I believe the purpose -- excuse me. The purpose of

1 this section was to outline the process that was used to arrive
2 at the potential sources of VOCs.

3 Q. Alrighty. And then you identified Whittaker as one
4 of the potential sources; correct?

10:27AM 5 A. During the screening process, yes.

6 Q. And all you did was identify them as a potential
7 source, nothing beyond that; right?

8 A. During the screening process, yes. And then
9 subsequent to that, there was additional looks at each of the
10:27AM 10 potential sources to evaluate the data with respect to each of
11 those potential sources to arrive at some conclusion as to if
12 they were a source.

13 Q. And one of the things you did is you identified
14 what's called data gaps; correct?

10:27AM 15 A. That is correct. I believe there's a summary of the
16 data gaps that were identified in the conclusions -- or the
17 last section of the report.

18 Q. What is a data gap, sir?

19 A. It's an area -- I guess I most simply could describe
10:28AM 20 it as an area where additional data would provide more
21 information.

22 Q. And what was the purpose of your report in
23 identifying these data gaps?

24 A. I believe the data gaps were identified specifically
10:28AM 25 with -- with respect to the distribution of VOCs relating to

1 each of the potential sources and areas that they could collect
2 additional data or information to better characterize the
3 distribution of those VOCs in groundwater.

10:28AM 4 Q. Okay. And, um, now, if you can go to Section 6 of
5 your report, please. Tell me when you're there.

6 A. I'm there.

7 Q. I'm sorry. It's 34.32.

8 All right. What's -- and this is about a
9 discussion. And please tell me what's the purpose of this
10:29AM 10 section.

11 A. Well, I think the two areas that are -- the two main
12 subsections within this section are summary of the findings of
13 the overall investigation and then recommendations and
14 conclusions, I think, specifically focused on those data gaps
10:29AM 15 we discussed and future work.

16 Q. Now, how did you refer to the sources that there
17 were data gaps for? Did you refer to them as actual sources or
18 potential sources?

19 A. I -- I'd have to look in the report to see how they
10:29AM 20 were referred to.

21 Q. Well, let me help you. If you see under Discussion,
22 do you see where it says, "Recommendations for investigation of
23 potential sources of VOCs"? Now, who were these potential
24 sources you were referring to?

10:30AM 25 A. Again, going back to the -- to the screening

1 process, the potential sources were Whittaker and Saugus
2 Industrial Center.

10:30AM 3 Q. Okay. Now, didn't you conclude that Whittaker and
4 SIC are considered the potential sources for TCE and PCE
5 detected in Saugus 1 and Saugus 2?

6 A. Uh, I don't know if that's -- I know in the summary
7 of the findings there was a conclusion that there's multiple
8 lines of evidence to suggest that Whittaker -- the former
9 Whittaker-Bermite facility is the source of TCE in Saugus 1 and
10:31AM 10 Saugus 2.

11 And then the following paragraph goes on to explain
12 that Saugus Industrial Center, though a less likely source, is
13 still a potential -- still a potential source. And there was
14 additional investigation required in order to, I guess, rule
10:31AM 15 them out as a contributing source.

16 Q. All right. Now, if -- let's go to page -- well,
17 it's Bates stamp 34.33, but it's page 6.2 of the report.

18 A. Yep.

19 MR. BLUM: And if you can highlight the whole first
10:31AM 20 paragraph, please, Rick.

21 Q. (BY MR. BLUM:) Now, there may be lines of evidence
22 to support the conclusion that Whittaker is a source. But
23 isn't it true you also -- when you refer to Whittaker, you
24 refer to them as a potential source?

10:32AM 25 A. When referring to the screening process, yes.

1 Q. Okay. And you said that -- the last sentence,
2 "Saugus Industrial Center and former Whittaker-Bermite facility
3 are considered the potential sources of TCE and PCE"; correct?

10:32AM 4 A. That's what's said here in the summary of the
5 screening process, yes.

6 Q. Now, the information that you've said -- where you
7 said they are the source, where was that?

8 A. Where is that -- where is that said in the report?

9 Q. Sure. Exactly.

10:32AM 10 A. It would be on the -- the previous page, um,
11 Section -- Section 6.1, looks like the second paragraph under
12 that section heading. There's -- there's one paragraph
13 regarding Whittaker, and then there's a following paragraph
14 regarding Saugus Industrial Center. So it would be on 34- --
10:33AM 15 or 34.32.

16 Q. Okay.

17 A. Middle -- middle of the page.

18 Q. And that talks about lines of evidence in support of
19 your conclusion; correct?

10:33AM 20 A. That's right.

21 Q. Do you ever say they're not a potential source,
22 they're an actual source -- words to that effect, that we don't
23 have to imply anything into it?

24 A. I think the first sentence of that second paragraph
10:33AM 25 says that -- that Whittaker-Bermite is a source of TCE.

1 Q. Now, one of the things you also did --

2 MR. BLUM: Your Honor, I'm going to move on to a
3 different subject. If you want to take a break, it's a good
4 time.

10:33AM 5 THE COURT: Oh, yes. Thank you, Counsel.

6 It is now 10:33. We'll break until 10:48. We'll
7 take our 15-minute break.

8 Please remember not to speak to anyone about the
9 case, the people, or the subject matter involved. Continue to
10 keep an open mind.

10:33AM

11 See you in 15 minutes.

12 THE COURTROOM DEPUTY: All rise for the jury,
13 please.

14 (Out of the presence of the jury:)

10:34AM

15 THE COURT: We're in recess until 10:48.

16 (Break taken.)

17 (In the presence of the jury:)

18 THE COURT: We remain on the record in the trial
19 matter with all present who were present before the break,
20 including the witness.

10:52AM

21 And you understand you remain under oath?

22 THE WITNESS: I do.

23 THE COURT: You may continue with your direct
24 examination.

10:52AM

25 MR. BLUM: Thank you, Your Honor.

1 Q. (BY MR. BLUM:) I think now you have Exhibit 1410 in
2 front of you -- or in one of the binders?

3 A. Yes.

4 Q. Can you take a look at it, please. And particularly
10:52AM 5 to the e-mail that has a subject entitled, "conversation with
6 Jim L." I believe it's from you; correct?

7 A. I -- I'm looking at the e-mail now, yes, there's --
8 there's an e-mail and a response and the original e-mail came
9 from me. Yes.

10:53AM 10 Q. The original e-mail was from you to who?

11 A. To my co-worker Yueh Chuang.

12 Q. And who is that?

13 A. He was my -- a co-worker of mine. He was the
14 project manager for the -- the Army Corps of Engineers project
10:53AM 15 that we talked about earlier.

16 Q. And for the court reporter's sake, can you spell it?

17 A. Spell --

18 Q. Chuang.

19 A. Oh. First name Yueh, Y-u-e-h. Last name is Chuang,
10:53AM 20 C-h-u-a-n-g.

21 Q. Okay. And you --

22 MR. GEE: Objection, Your Honor. Hearsay.

23 MR. BLUM: I haven't asked a question.

24 MR. GEE: Sorry.

10:53AM 25 THE COURT: Is there an objection?

1 MR. GEE: No, Your Honor. I'm sorry.

2 THE COURT: You may proceed.

3 Q. (BY MR. BLUM:) And in that e-mail, you summarized a
4 conversation you had with Jim L.; correct?

10:54AM

5 A. Yes.

6 Q. And Jim L. is James Leserman; correct?

7 A. That's correct, yes.

8 Q. Did Mr. Leserman tell you anything that's summarized
9 in this e-mail concerning whether or not the Department of

10:54AM

10 Public Health wanted the water agency to conduct an
11 investigation as to the sources of VOCs?

12 A. I believe -- I believe in my e-mail I -- I
13 summarized that he expressed concern -- or that DPH, the
14 Department of Public Health, expressed concern about VOCs. I
15 did not say anything about the Department of Public Health
16 requesting an investigation.

10:54AM

17 I -- I go on to summarize that Castaic Lake Water
18 Agency would potentially like to investigate the VOC source.

19 MR. BLUM: Your Honor, may I publish Exhibit 1410?

10:55AM

20 THE COURT: Yes.

21 MR. BLUM: If we can blow up the bottom part.

22 Q. (BY MR. BLUM:) Alrighty. And did Mr. Leserman also
23 tell you that at the time he wasn't sure whether Whittaker was
24 the source?

10:55AM

25 A. Uh, yeah. I think in the e-mail I summarized that

1 he acknowledged that it may or may not be Whittaker.

2 Q. That was the source of the VOCs and the wells
3 operated by the water agency; correct?

4 A. That's correct.

10:56AM

5 MR. BLUM: Your Honor, this may be technical. I
6 would move 1410 into evidence.

7 THE COURT: It's received.

8 (Exhibit 1410 received into evidence.)

10:56AM

9 Q. (BY MR. BLUM:) Now, I want to move back to your
10 report and I want to move beyond the report to the date of your
11 deposition in September of 2019.

12 On that date, looking at the totality of the
13 information you had at that moment, not just the report but
14 everything you had at your disposal, isn't it true that the
15 only thing you could conclude based on all that information was
16 that Whittaker was a -- was that there was a possibility that
17 Whittaker was a source?

10:56AM

18 A. It sounds accurate that I said that in my
19 deposition.

10:56AM

20 Q. So was that -- when you said in your deposition in
21 2019 that, based on all the information at your disposal, that
22 there was only a possibility that Whittaker was a source, was
23 that the truth?

10:57AM

24 A. That's what I said in my deposition. But I, again,
25 do stand by the -- the report that I prepared and do believe

1 that nothing has changed my mind on the findings about either.

2 Q. Was it the truth -- let me back up.

3 In 2019, you had already published the report;
4 correct?

10:57AM

5 A. Correct.

6 Q. So when you said at your deposition under oath that
7 there was only a possibility that Whittaker was the source, you
8 were taking into account the report you wrote four years
9 earlier; right?

10:57AM

10 MR. GEE: Objection. Asked and answered.
11 Argumentative.

12 THE COURT: Overruled.

13 You may answer.

10:57AM

14 THE WITNESS: Again, I believe that, you know, the
15 semantics around adjectives I may have said in my deposition.
16 But again, reviewing my report in its current state -- or in my
17 current state of the knowledge of data in that area, I stand by
18 what's said in the report.

10:58AM

19 Q. (BY MR. BLUM:) Sir, when you say semantics as to
20 language, are you saying that the word "possible" and the word
21 "likely" are the same thing, they mean the same thing?

22 A. I -- I'm saying that maybe I said something in my
23 deposition that I didn't have time to quite think through.
24 Looking back at the findings in the report, I agree with them.

10:58AM

25 Q. Isn't it true that in your deposition, you were

1 asked -- several times you repeated the word that your
2 conclusions were only that Whittaker was a possible source.
3 This wasn't a one-off.

10:58AM 4 A. I -- I don't recall how many times I may have said
5 that in my deposition.

6 MR. BLUM: Your Honor, may I refresh the witness's
7 recollection on that issue?

8 THE COURT: Under 403, I think we've gotten as much
9 as you're going to get on this.

10:58AM 10 Q. (BY MR. BLUM:) Now, Mr. Lechler, as a
11 hydrogeologist, would you agree with me that in order for
12 Whittaker to be the source of the contamination at the wells at
13 issue, there has to be a pathway for the VOCs to travel from
14 Whittaker to those wells?

10:59AM 15 A. Uh, I'm not exactly sure what you're asking, but,
16 yes, I mean, the VOCs -- if Whittaker is the source, they need
17 to somehow get from the property to the well.

18 Q. And isn't it correct in your report, when you
19 discuss those pathways, you describe them as potential
10:59AM 20 pathways?

21 A. Yes. Because there's -- there's -- there's not one
22 given pathway that's been necessarily confirmed, um, and I also
23 believe that there could be more than one pathway for
24 contamination to arrive at those wells.

10:59AM 25 Q. Well, isn't it true that each pathway you discussed,

1 the only reference you made to it was that a -- either as a
2 conceptual pathway or a potential pathway?

11:00AM 3 A. I -- I'd have to refer to the report as far as how
4 I'd describe it to them. But, yes, the intent of those
5 pathways that were outlined in the report was to show
6 conceptually how contamination could arrive at the wells from
7 various sources. And it was not meant to illustrate an actual
8 physical pathway because those are very complicated underground
9 pathways that, you know, can't be -- can't be described or
11:00AM 10 understood as simply as showing them in that conceptual manner.

11 Q. Well, to go further, isn't it correct that all of
12 the pathways for the travel of VOCs from the Whittaker site to
13 the wells were only hypotheticals? Every single one.

14 A. Uh, I -- again, I don't -- I don't know about
11:01AM 15 hypothetical. I think it was more of a conceptual -- you know,
16 conceptualization as to how it could get there from various
17 areas.

18 MR. BLUM: Your Honor, I'd like to refer to his
19 deposition, page 210, lines 3 through 13.

11:01AM 20 MR. RICHARD: I'm sorry. What lines?

21 MR. BLUM: 3 through 13.

22 MR. RICHARD: Thank you.

23 THE COURT: You may proceed.

24 Perhaps you can read it, Mr. Blum.

11:02AM 25 MR. BLUM: Sure.

1 THE COURT: It happens with technology. If he has
2 it ready, he can play it. Otherwise, maybe you should read it.

3 MR. BLUM: All right.

4 "QUESTION: Mr. Lechler, you talked in some
11:02AM 5 of the questions relating to SIC's counsel that the
6 pathways described in Figure 4-3 were actually --
7 I think you said hypothetical pathways.

8 "But you can't say one way or another whether
9 they actually are occurring.

11:03AM 10 "ANSWER: That's true.

11 "QUESTION: That would be true for all the
12 different pathways that you looked at in this report;
13 correct? They're hypotheticals?

14 "ANSWER: That's true, yes."

11:03AM 15 Q. (BY MR. BLUM:) Were all of the pathways you looked
16 at in -- were all the pathways you looked at in your report
17 purely hypotheticals?

18 A. I mean, that's what I said here in my deposition.
19 Again, I believe this is a case of semantics to some degree and
11:03AM 20 that the intent of what was presented in the report was to show
21 conceptually, hypothetically, whatever word you want to use,
22 how things could get from one area to another, um, and it was
23 not meant to illustrate an exact pathway because that's
24 essentially impossible due to the underground nature of this
11:04AM 25 migrating contamination.

1 Q. All right. Now, I want to look at one of your
2 diagrams that discussed one of those hypothetical pathways,
3 Figure 5-5. I'm sorry. It's on page 34-63 -- .63.

4 MR. BLUM: And if we can blow up the one to the
5 left.

6 Q. (BY MR. BLUM:) All right. Sir, this is one of the
7 hypothetical pathways that you disclosed in your report; isn't
8 that true?

9 A. Yes. This is from the report.

10 Q. And didn't you describe this in your deposition as a
11 cartoonish depiction?

12 A. I believe I probably did, yeah.

13 Q. But you're not saying that the VOCs actually
14 traveled along this pathway, are you?

15 A. Again, not this exact pathway. This is meant to
16 illustrate conceptually in a large scale, big picture, how
17 water could flow from one area to another.

18 Q. And in order to determine whether this is anything
19 more than a hypothetical, you recommended a further
20 investigation be done; correct?

21 A. Uh, the recommendation was more based on, um,
22 delineating the extent of the contamination. And along with
23 that, you would, I guess, provide some more certainty as to
24 whether or not some of these potential pathways existed.

25 Q. All right. And, sir, in your conclusion, in your

1 report, you recommended that if this additional work verified
2 that Whittaker was a source and a pathway existed, only then
3 should a request made -- be made to DTSC to order a further
4 investigation; correct?

11:06AM 5 A. Uh, I'd have to refer to the report to know exactly
6 how I -- what I said.

7 Q. If we can put up page 34.36, which is page 6-5.

8 And "If additional characterization activities," if
9 you could read that to yourself, please.

11:06AM 10 A. Uh, yeah. It says -- read it out loud or --

11 Q. Well, when you say, "If additional characterization
12 activities," does that refer to the subsequent investigation
13 that you recommended?

14 A. I believe it does, yes.

11:07AM 15 Q. Was that ever done?

16 A. Um, not to my knowledge, no.

17 Q. And if those confirm that the former Whittaker site
18 VOCs are migrating, then DTSC should require certain things;
19 correct?

11:07AM 20 A. It says that, yes, if -- if those confirm the
21 contamination is related to the facility, that DTSC should
22 require amending Whittaker's RAP, remedial action plan, to
23 address those VOCs.

24 Q. And would you then agree, since those recommended
11:07AM 25 activities have never been done, there should be no reason for

1 DTSC to amend anything?

2 A. Well, I -- I believe -- or earlier in the report, it
3 was also stated that the intent of the report was to outline --
4 it was either in the report or the cover letter for -- you
11:08AM 5 know, this report to be a basis to work with DTSC to have these
6 potential sources do these investigations that were
7 recommended.

8 Q. Well, didn't DTSC actually respond to this report?

9 A. They did, yes.

11:08AM 10 Q. And -- did you read the letter actually that you got
11 that was sent to the water agency about the report?

12 A. I believe I did, yes.

13 Q. All right.

14 MR. BLUM: Your Honor, that letter is Exhibit 12.

11:08AM 15 May I publish it?

16 MR. GEE: No objection.

17 THE COURT: You may.

18 (Exhibit 12 received into evidence.)

19 Q. (BY MR. BLUM:) And is this the letter dated

11:08AM 20 September 12th, 2017 -- 2016, that was written to Mr. Stone
21 relating to your investigation?

22 A. It does look like it, yeah.

23 Q. Okay. Now, did DTSC after looking at your report
24 recommend anything further should be investigated as to

11:09AM 25 Whittaker -- as to the Whittaker site?

1 A. I believe they have not made any -- any -- they have
2 not issued any orders to either Whittaker or Saugus Industrial
3 Center to do any investigation. And in the closing of this
4 letter or somewhere in the letter they recommend that the
11:09AM 5 agency be the one to approach each of these parties and try to
6 essentially solve the problem themselves, which, to me, is
7 surprising because in these cases, typically it's the
8 responsibility of -- of the polluter to characterize the full
9 extent, both vertically and laterally, where they've impacted
11:09AM 10 groundwater.

11 Q. That wasn't my question.

12 My question was: Did DTSC suggest to Mr. Stone that
13 any further investigation of the Whittaker site was required?

14 A. I would need to read through the letter to -- to
11:09AM 15 decide if -- if they did or not. I don't recall.

16 Q. It's only two pages.

17 A. Okay. I can -- I can read it.

18 THE COURT: I'm going to -- this is in evidence.
19 Let's move on under 403.

11:10AM 20 Q. (BY MR. BLUM:) Let's go to the second page.

21 All right. DTSC recognized that SIC and Whittaker
22 were the most likely sources; correct?

23 A. That's what it says, yes.

24 Q. All right. And they -- they suggested that further
11:10AM 25 investigation needed to be done of the SIC site; correct?

1 A. I believe they have that in there, yes.

2 Q. Okay. And in that suggestion, didn't they conclude
3 that the highest levels of TCE in the groundwater were
4 emanating not from Whittaker but from SIC?

11:10AM 5 A. That says that there, yeah. I don't know if I would
6 agree with that but --

7 Q. Now, after Mr. Stone received this letter, did the
8 water agency take any efforts to do the investigation suggested
9 by Mr. Diaz of the Department of Toxic Substances Control?

11:11AM 10 MR. GEE: Objection. Lacks foundation.

11 THE COURT: Sustained.

12 Q. (BY MR. BLUM:) Do you know whether Mr. Stone or
13 anybody at the water agency took any actions to do the further
14 investigation recommended by the department?

11:11AM 15 MR. GEE: Objection. Calls for speculation.

16 THE COURT: I'll allow the answer.

17 Yes or no, do you know one way or the other?

18 THE WITNESS: I do not.

19 Q. (BY MR. BLUM:) All right. Now, the investigation
11:11AM 20 you did relate --

21 MR. BLUM: Hold on a minute, Your Honor.

22 Q. (BY MR. BLUM:) I want to talk about SIC. Now,
23 before we do that, I want to talk about some terms so that
24 we're -- we're using the -- the same meaning.

11:12AM 25 Contamination can reach a -- an underground source,

1 either moving horizontally or vertically; correct? I'm not
2 suggesting those are the only ways, but those are two of the
3 options.

11:12AM 4 A. I -- yeah. I -- I think there's a lot of variations
5 on that, but yes. Those -- those would be the two main -- main
6 directions.

7 Q. So, for instance, if in the Whittaker site, if there
8 was a spill on the surface at Whittaker that migrated down to
9 the groundwater, theoretically that contamination can move
11:12AM 10 horizontally with the aquifer and contaminate S-1 or S-2;
11 correct?

12 A. Yes.

13 Q. Isn't it also true that if there is a spill at SIC
14 and the water -- in the water above the well, that water can
11:13AM 15 move vertically down to the well? Correct? I'm sorry. That
16 contamination can move vertically down to the well.

17 A. That's a possibility, yes.

18 Q. All right. Now, you would agree with me that there
19 are documented releases of VOCs, specifically TCE, at the, um,
11:13AM 20 SIC site?

21 A. Based on the reports that I've read, yes.

22 Q. Okay. And wouldn't you agree with me that the
23 pathway -- sorry -- or the way it's migrating is west, towards
24 the Saugus wells?

11:14AM 25 A. I would agree that the regional groundwater flow

1 direction is west throughout the entire area.

2 Q. Okay. And you would also agree with me that it has
3 migrated at least to the location where the Saugus wells exist;
4 correct?

11:14AM 5 A. I think there's -- I believe in the report it's
6 outlined that there's a -- there's a likely chance that there's
7 contamination detected across the street from SIC related to
8 SIC, yeah.

9 Q. Well, if we can go to your report, page 34.58. It's
11:14AM 10 actually Figure 4-2. Can you describe for the jury what
11 Figure 4-2 is?

12 A. Uh, well, the intent of this figure is to show the
13 recommended monitoring wells which are shown in the four --
14 four circles numbered 1 through 4. Under that is contours
11:15AM 15 of -- what's the page?

16 Q. It's -- it's the wrong page. I had it wrong.

17 MR. GEE: Counsel, did you want him to complete his
18 answer?

19 MR. BLUM: Yes.

11:15AM 20 THE COURT: Let's go ahead and put the figure up
21 that he was describing for now.

22 MR. BLUM: Go ahead and put that figure back.

23 Sorry. Okay.

24 THE WITNESS: So, again, there's four areas where
11:15AM 25 there's additional investigation recommended. Below that is an

1 interpreted plume of TCE, I believe -- yes, TCE concentrations
2 that show, as interpreted, TCE exit -- you know, leaving the
3 SIC site and flowing to the west.

4 MR. BLUM: All right. If we could put up 34.56,
11:16AM 5 which is Figure 4-2. And if you can blow up the one to the
6 left.

7 Q. (BY MR. BLUM:) Now, these are contour lines;
8 correct?

9 A. Um, that's -- yeah. That's a way to refer to them.

11:16AM 10 Q. And does it show -- and you're contouring in this
11 diagram the extent of the TCE contamination emanating from SIC;
12 correct?

13 A. That's correct. Yes.

14 Q. And is Saugus 1 within the contour for TCE emanating
11:16AM 15 from SIC?

16 A. Yes, in plan view.

17 Q. Can you show the jury where Saugus 1 is?

18 A. Um --

19 Q. Just draw with your finger.

11:17AM 20 A. (Indicating.)

21 Q. Okay. And where is Saugus 2?

22 A. (Indicating.)

23 Q. Okay. Now, when these wells are operating, they
24 produce something called a capture zone; correct?

11:17AM 25 A. Yeah.

1 Q. What is a capture zone?

2 A. It's basically the area -- the area that -- that I
3 guess water flows towards the well from.

4 Q. In other words --

11:17AM

5 A. But the -- but the -- I guess there's two issues
6 here, is we have what -- what you see in map view and then
7 there's also what is happening in cross sectional view.

8 Q. Sir, my question was -- did you answer the question
9 fully what a capture zone is?

11:18AM

10 A. Yeah. I believe so. Yeah.

11 Q. And would you agree that the -- that you have
12 described the capture zone for well S-1 as large?

13 A. "Large" is a relative term. I mean, it's -- yeah.
14 I mean, it influences -- water flows to it from a large area,
15 yes.

11:18AM

16 Q. Didn't you testify at your deposition that SIC is
17 within the capture zone for S-1?

18 A. I don't recall if I did. If I did, I guess I did.

19 Q. All right. If we could go to page 119, lines 15
20 through --

11:18AM

21 MR. GEE: Objection. Improper impeachment.

22 THE COURT: Sustained.

23 You can have him -- you could refresh his memory.

24 Q. (BY MR. BLUM:) All right. Do you have your
25 deposition in front of you, sir?

11:18AM

1 A. I -- it may be. I don't know. There's a lot of
2 binders up here. If somebody knows that it's in one of them,
3 if they could --

4 THE COURT: Is it a binder, Counsel?

11:19AM

5 MR. BLUM: It is, Your Honor.

6 THE COURT: All right. Mr. Cruz, can you assist,
7 please?

8 THE COURTROOM DEPUTY: What number is it again?

9 THE WITNESS: Yeah, I don't know what number it is.

11:19AM

10 THE COURT: It won't be a number. It should have
11 its own subject name of deposition.

12 THE COURTROOM DEPUTY: I'm sorry, Your Honor. I
13 didn't hear it.

14 THE COURT: It's the deposition.

11:19AM

15 THE COURTROOM DEPUTY: I don't know if he has the
16 deposition up here.

17 THE COURT: Have him use this, please.

18 THE COURTROOM DEPUTY: Yes, Your Honor.

19 THE WITNESS: I'm sorry.

11:19AM

20 THE COURT: Give him the page and the lines, please,
21 Mr. Blum.

22 MR. BLUM: Okay. 119, lines 15 through 18.

23 THE COURT: Just read it to yourself and see if it
24 refreshes your recollection, and he'll ask you a question when
11:20AM 25 you're done.

1 THE WITNESS: Yeah, I --

2 THE COURT: So if you've reviewed it, ask your
3 question, please.

4 Q. (BY MR. BLUM:) Does that refresh your recollection
11:20AM 5 that in your deposition you testified that SIC was in the
6 capture zone for Saugus 1?

7 A. Yeah, but I believe we were referring to a figure.
8 And then I go on in my deposition to explain that this is in
9 two dimensional view but, if viewed in three dimensions, it's a
11:20AM 10 different story.

11 Q. All right. Now -- so your answer is yes, you did,
12 and then you tried to explain it?

13 A. In my deposition?

14 MR. GEE: Objection. Argumentative.

11:20AM 15 Q. (BY MR. BLUM:) Is that correct?

16 THE COURT: Ask another question, Mr. Blum.

17 Q. (BY MR. BLUM:) All right. Now, the -- isn't it
18 correct, sir, that the contamination above the Saugus wells
19 emanating from SIC, at least hypothetically or conceptually,
11:21AM 20 could move down vertically and get to the well?

21 A. Yeah. I believe that's shown as a figure in the --
22 in the report.

23 Q. So you would agree that's a possibility; correct?

24 A. That's how it's presented, I believe.

11:21AM 25 Q. Okay. And, sir, isn't it correct that in 2013, you

1 did what's called a pumping study to determine whether or not
2 the pumping of S-1 was strong enough to influence wells above
3 it?

4 A. In 2013? I don't believe so. No.

11:21AM

5 Q. Can you look at Exhibit 1397?

6 MR. BLUM: I'm sorry. Let me get the right number,
7 Your Honor. I think it's -- 1397.

8 THE WITNESS: I see that, yes. The memo is dated
9 2013. This work was done in 2010.

11:22AM

10 Q. (BY MR. BLUM:) And this is a memo describing work
11 done by you; correct?

12 A. That's correct. Yes. Me and my colleagues at
13 CH2M Hill.

11:22AM

14 Q. And you're -- when you wrote this -- this report,
15 you believed that it was true and correct and fairly
16 represented what you were seeking to investigate; right?

17 A. Yeah.

18 MR. BLUM: Your Honor, I'd ask to publish the
19 exhibit.

11:22AM

20 MR. GEE: Objection. Hearsay.

21 THE COURT: I'm going to overrule it on that ground.
22 But let me -- let me hear, what is the purpose of this?
23 Because there may be another reason to sustain the objection.

11:23AM

24 MR. BLUM: To show that he concluded in this
25 report --

1 THE COURT: All right. Then I'm going to sustain
2 it.

3 Go ahead and ask him some foundational questions.

4 Q. (BY MR. BLUM:) Did you conclude in the report that
11:23AM 5 when Saugus 1 was pumped, that there was a delayed response
6 where the groundwater above it in certain alluvial wells drew
7 down?

8 A. Uh, I -- I'd have to -- to look at it.

9 Q. Well, I can help you. Look at page 8 under the
11:23AM 10 section called "Quaternary Alluvium."

11 A. Okay. It said, "Water levels monitored in the" --
12 "in the alluvium at two locations declined by certain amounts
13 across the evaluation period, but there was no indications of
14 direct hydrologic response to pumping of Saugus 1 and 2."

11:24AM 15 Q. Now, the wells -- one of them was AL-6; right?

16 A. That's correct. Yes.

17 Q. AL-6, during the time that S-1 was pumping, the
18 water level decreased almost 5 feet; correct?

19 A. That's correct. Yes.

11:24AM 20 Q. Doesn't that mean that at least indirectly, when
21 Saugus 1 is pumping, it is drawing and affecting water in AL-6?

22 A. I don't believe necessarily. That's -- that's the
23 only conclusion.

24 Q. Well, isn't that one of the reasonable conclusions
11:24AM 25 that could be drawn from that?

1 A. That's a potential conclusion. It's also that the
2 monitoring period for this -- this study was -- was done from
3 the spring until, I believe, the late summer. And seasonally,
4 the water levels in the alluvium fluctuate quite a bit just due
11:25AM 5 to rainfall. So it could also be another explanation.

6 Q. Well, did you compare the drawdown from -- at AL-6
7 to what was being -- what was happening at other wells to see
8 if it was greater or lesser?

9 A. I don't recall if we did or not. Um --

11:25AM 10 Q. Isn't that something a good scientist would do?

11 A. I -- again, it depends on what the intent of
12 understanding -- what the intent of the memo was. And I don't
13 know that there was a focus on the alluvium necessarily.

14 Q. Well, what was the intent of the memo -- or the
11:25AM 15 study? Let's make it easier.

16 A. Well, I'd have to go back and see what we said at
17 the beginning of the document.

18 Um, basically the study was done as Saugus 1 and
19 Saugus 2 were returned to service to monitor water levels
11:26AM 20 regionally to see how the water levels in various wells may
21 change with response to -- to their pumping.

22 Q. So you wanted to know what effect would the pumping
23 of Saugus 1 have on other wells such as AL-6; correct?

24 A. AL-6 would be one of the wells that we monitored.

11:26AM 25 Q. And you found that when you pumped Saugus 1, AL-6

1 drew down 5 feet; right?

2 A. During the period that we monitored it, the water
3 level went down 5 feet, yes.

11:26AM

4 Q. How long did you monitor it for? I don't need exact
5 time.

6 A. I -- I want to say it was close to a six-month
7 period, four-month, six-month.

11:27AM

8 Q. As a hydrogeologist, if there was a drawdown for
9 5 feet in six months, would there have been a greater drawdown
10 for 10 years?

11:27AM

11 A. Well, again, the water levels in -- you know, in
12 this particular unit, as well as all of the units, vary with a
13 number of different factors, pumping being one of them,
14 recharge from rainfall being another. So it's not as simple as
15 coming up with, you know, one explanation to why a water level
16 changes.

11:27AM

17 Q. Sir, didn't you conclude in a subsequent report in
18 2015 that, as a result of the study that we just talked about,
19 you couldn't conclude whether or not this contamination in the
20 Saugus wells were the result of horizontal or lateral
21 contamination moving from Whittaker or vertical contamination
22 moving from surface contamination?

11:28AM

23 A. I don't know what report you're referring to. But
24 if -- again, if -- if it was put in a report that we prepared,
25 then that's what we did.

1 Q. Well, the other -- you said you had two reports in
2 that binder. And the second one was done for the Army Corps;
3 correct?

4 A. Yes, in 2015, there was two major reports that were
11:28AM 5 prepared related to this -- this entity.

6 Q. Okay. And that is Exhibit 1398. If you can -- if
7 you can take a look at it, please.

8 And is that a report that you published?

9 MR. GEE: Counsel, was that included in your
11:28AM 10 designations? I'm not finding it in my binder.

11 MR. BLUM: I believe it was.

12 THE COURT: The Court doesn't have it either.

13 MR. BLUM: Well, then I won't publish it,
14 Your Honor, but if I can just lay the foundation for it.

11:28AM 15 THE COURT: All right.

16 Q. (BY MR. BLUM:) Is that a report that you wrote?

17 A. I was an author of this report with some other
18 coworkers of mine, yes.

19 Q. Okay.

11:29AM 20 THE COURT: Let me ask. Was this stipulated to or
21 is this challenged?

22 MR. GEE: Stipulated to, Your Honor.

23 MR. BLUM: Oh.

24 THE COURT: All right. Then go ahead and proceed.

11:29AM 25 MR. BLUM: All right. You can put it up, please.

1 Q. (BY MR. BLUM:) This is a report that you authored;
2 correct?

3 A. I was an author on this, yes.

11:29AM

4 Q. And now, the company isn't Jacobs. It's CH2M Hill;
5 correct?

6 A. Which Jacobs acquired a few years back, yes.

7 Q. But that's the company at the time that you were
8 working for; right?

9 A. Correct.

11:29AM

10 Q. And what was the purpose of this report?

11 A. This was the final report that we prepared for the
12 Army Corps of Engineers for the -- the study that we had been
13 conducting that started in the -- 2000/2001 time frame. We
14 published one initial report in 2005, which was fairly
15 extensive. And this was kind of a summary of all of the work
16 that had been completed between 2000 -- that 2005 report and
17 this date here.

11:30AM

18 Q. And, sir, was one of the purposes of the report to
19 discuss, for instance, what additional work needed to be done?

11:30AM

20 A. I think, again, similar to the VOC investigation
21 report, there is some recommendations as to areas where
22 additional wells would assist in better delineating
23 contamination, yes.

11:30AM

24 Q. All right. And you actually had a section called
25 "Data Gaps"; correct? It's on page ES9, which is the executive

1 summary, 9. It's .11, page .11.

2 A. Yeah. So this is -- this is an executive summary of
3 the larger section that probably covered this topic in the --
4 in the report.

11:31AM 5 Q. Okay. And under Data Gaps, you see west of the
6 site?

7 A. I do, yeah.

8 Q. And the second sentence says, "The existing data."

9 MR. BLUM: Can you blow it up?

11:31AM 10 Q. (BY MR. BLUM:) Now, "The existing data suggests
11 that the distribution of PCE and TCE detections in the base of
12 the quaternary" --

13 Did I pronounce that right, by the way?

14 A. I think it's pronounced -- that's one way, yeah.

11:31AM 15 Q. -- "alluvium in the HSU S-1 are not adequately
16 characterized to determine if PCE and TCE in production wells
17 are the result of vertical migration of shallow nearby impacts
18 or lateral migration from a different area." Did I read that
19 correctly?

11:32AM 20 A. That's -- yeah. Yes.

21 Q. Now, what's HSU S-1?

22 A. It's the -- I'm not sure how much HSUs have been
23 discussed during this. I don't really want to go into the full
24 description. But HSU S-1 is a portion of the Saugus formation

11:32AM 25 that is beneath -- typically beneath the alluvium, at least in

1 the vicinity of the production wells. It's shallow Saugus
2 formation.

11:32AM

3 Q. All right. And production wells are the wells that
4 the water agency uses to draw water for its customers from;
5 correct?

6 A. Yes.

7 Q. All right. And vertical migration is the migration
8 we talked about that comes from the surface and moves down;
9 correct?

11:33AM

10 A. Yes.

11 Q. And lateral migration is one that moves with the
12 groundwater; correct?

13 A. Correct.

11:33AM

14 Q. So were you saying that in 2015, when you did this
15 report for the Army Corps of Engineers, that there wasn't
16 enough information to determine whether the contamination of
17 VOCs in the S-1 or S-2 came from the top or the surface or had
18 moved laterally in the groundwater?

11:33AM

19 A. I mean, the main point of the statement is that it's
20 not adequately characterized being a data gap.

21 Q. And the -- the data gap was a large number to create
22 an inability to determine the source of the contamination for
23 the production wells; isn't that correct?

11:34AM

24 A. I mean, it's -- there's not necessarily any source
25 identification context here. It's basically saying that -- you

1 know, is this -- you know, are things flowing vertically to
2 these wells or laterally.

3 Q. Okay. And vertical would mean SIC and lateral would
4 mean Whittaker; right?

11:34AM 5 A. I would have to -- I mean, based on this geography,
6 that's a fair statement maybe. But, I mean, there's vertical
7 migration and lateral migration. And I believe that in the VOC
8 investigation report, there's -- you know, there's, again, a
9 conceptual migration pathway from SIC that would include both
11:35AM 10 lateral and vertical migration.

11 Q. Last couple of questions.

12 Do you recall at some point an e-mail chain or
13 thread regarding whether or not there should be -- whether or
14 not the water agency should try to perform fingerprinting of
11:35AM 15 VOCs?

16 A. Yeah. I recall that it came up in my deposition.

17 Q. Is that -- did you review those e-mails to prepare
18 for your testimony here today?

19 A. I -- I believe I looked at it. I can't say that I
11:35AM 20 studied it.

21 Q. And you -- you commented on whether or not the
22 agency should go ahead with fingerprinting; right?

23 A. I believe I commented that I agreed with somebody
24 else's comments that it would be an inconclusive evaluation
11:35AM 25 and, therefore, not likely worthwhile.

1 Q. Isn't -- didn't you also agree that -- that was with
2 Mr. Takaichi -- or I think it's Dr. Takaichi, isn't it?

3 A. I -- I'm not sure if he was a Ph.D. or not.

4 Q. But it was Mr. Takaichi; correct?

11:36AM 5 A. Lynn Takaichi, yes.

6 Q. Would you also agree that one of the things that you
7 concurred with for -- of Dr. Takaichi was that a reason not to
8 do it was that it might exonerate Whittaker?

9 A. I believe that's what I said in my deposition, yes.

11:36AM 10 Q. Is that the truth?

11 A. Again, I -- I agree with what he said. And the
12 main -- the main point of my agreement was that it would be
13 inconclusive.

14 MR. BLUM: That's all I have, Your Honor.

11:36AM 15 THE COURT: Mr. Gee.

16 **CROSS-EXAMINATION**

17 BY MR. GEE:

18 Q. Mr. Lechler, I'd like to just briefly go over some
19 of your background, if that's okay.

11:37AM 20 What -- can you briefly describe your education
21 background?

22 A. Sure. So I -- I have a bachelor's degree in geology
23 and a master's degree in hydrogeology, both acquired in the
24 late '90s, early 2000s.

11:37AM 25 Q. And do you have any professional licenses?

1 A. I'm registered in the state of California as a
2 professional geologist and a certified hydrogeologist.

3 Q. Okay. Counsel referenced three studies that you
4 were involved in. How many studies did you do in the area of
11:38AM 5 the Whittaker site related to perchlorate contamination?

6 A. Um, the -- the main -- the main study would -- would
7 have been the Army Corps work that was related to a compilation
8 of a number of -- I guess there was one large characterization
9 study that, again, was kind of completed in 2005, started in
11:38AM 10 the early 2000s.

11 And -- and then after that, between 2005 and 2015
12 when the -- when the study was officially completed, there was
13 a number of small projects related to contamination --
14 perchlorate contamination in the production wells and
11:38AM 15 regionally.

16 Q. Okay. So you've been basically studying the -- the
17 area for -- between 10, 15 years. Is that about right?

18 A. Essentially my entire professional career, that was
19 the first project that I started working on when I was hired by
11:39AM 20 CH2M Hill.

21 Q. Okay. And counsel mentioned a pump test that was
22 conducted around -- I think you said the test itself was
23 conducted in 2010. Is that correct?

24 A. The test that was referred to is when Saugus 1 and
11:39AM 25 Saugus 2 were returned to service after being out of service

1 for ten or so years. And I believe that occurred in the spring
2 of 2010.

3 Q. Okay. And what exactly is a pump -- pump test?

4 A. Well, in general, a pump test is -- is where you
11:39AM 5 would pump a -- a well and monitor the response of that pumping
6 in -- both in the well that you're pumping as well as other
7 wells that are surrounding that. And one of the things that
8 you do is you look to see how the water levels in those wells
9 respond to that pumping.

11:40AM 10 And from that -- from that information, you know,
11 the amount of water level changed due to the pumping, the rate
12 that you're pumping, you can make some inferences and do some
13 calculations to figure out how quickly groundwater flows.

14 It also tells you something about the
11:40AM 15 interconnectedness between one -- from one well to the -- those
16 pumping wells and -- and, essentially, if they're hydraulically
17 communicating with one another.

18 Q. Okay. And you mentioned that you conducted this
19 test during the start-up of S-1 and S-2. Was that -- was the
11:40AM 20 pump test to determine whether or not other wells were
21 hydraulically connected to Saugus 1 and Saugus 2?

22 A. Uh, I mean, that was -- I mean, that would have been
23 one of the objectives. I think, you know, a number of -- I
24 don't recall the exact number. But, I mean, there was -- water
11:41AM 25 levels were monitored in -- in wells -- I want to say 30 to 50

1 different wells scattered anywhere from probably a half mile
2 away from the Saugus wells, all the way up to within tens of
3 feet from the wells and then also wells that are screened or,
4 you know, have water coming into them from various depths so
11:41AM 5 you can kind of see how far away the pumping influences water
6 levels, as well as how -- vertically where there's a -- an
7 influence of that pumping.

8 Q. Okay. And is it important to know whether a
9 monitoring well is hydrogeologically connected to Saugus 1 and
11:42AM 10 Saugus 2 in order to generate, for example, flow contour data?

11 A. Yeah. I think one -- one of the main objectives
12 would have been to -- to further refine and characterize these
13 HSUs, or hydrostratigraphic units, to better understand the
14 groundwater flow paths within the -- within the larger area.

11:42AM 15 Q. And what wells were connected to the Saugus wells
16 during -- as determined through your pump test?

17 A. I mean, I think -- in general terms, the -- you
18 know, the wells -- I believe that the -- the memo that was
19 referenced earlier, there was a -- there was a categorization
11:43AM 20 of whether or not wells responded immediately to pumping. So
21 you basically saw a very quick water level change when pumping
22 started to occur or if -- whether or not there was not an
23 immediate response.

24 And typically the wells that showed an immediate
11:43AM 25 response to pumping were within the HSU's S-3C and deeper, so

1 S-3C, 5A, and other higher numbered HSUs.

2 Q. And was there any monitoring wells that -- of
3 significance that was not connected to the Saugus 1 and 2 or
4 HSU-3?

11:43AM

5 MR. BLUM: Vague.

6 THE COURT: Sustained.

7 Q. (BY MR. GEE:) I'd like to display TE 34.65. And --

11:44AM

8 MR. GEE: Your Honor, for the record, we're dealing
9 with two different sets of Exhibit 34. And the page numbers
10 that I'm referencing are two pages off from the one that
11 counsel for Whittaker is using.

12 THE COURT: Why don't we use the one that's actually
13 been admitted or will be admitted into evidence, please.

11:44AM

14 MR. GEE: Okay. I'm going to presume that that
15 would be mine.

16 THE COURT: Okay. So let's go ahead and use that.

17 Q. (BY MR. GEE:) Okay. Mr. Lechler, was CW-1 one of
18 the wells that -- that you evaluated during the pump test?

11:45AM

19 A. Um, so CW-1 has -- at that location, there's three
20 different wells at separate depths. And during this pumping,
21 we monitored the deepest of those three wells, CW-1C.

22 MR. GEE: Okay. And can you blow up the left-hand
23 graphic?

11:45AM

24 Q. (BY MR. GEE:) And, Mr. Lechler, can you use your
25 finger and point out where CW-1 is?

1 A. (Indicating.)

2 Q. Why was this well significant?

3 A. Um, well, this well -- I mean, it's -- we did not
4 observe any -- any immediate responses to pumping in this -- in
11:45AM 5 this well, um, which suggests that it's in shallower HSUs, S-1
6 or S-3A potentially. It is in the Saugus formation.

7 And that's really the only offsite monitoring
8 location in that area. So there's -- there's really no
9 monitoring of -- of the portion of the aquifers that are
11:46AM 10 supplying the wells at that location.

11 MR. GEE: Okay. Can you display the right hand --
12 display the right-hand graphic on that page?

13 Q. (BY MR. GEE:) Mr. Lechler, can you explain how the
14 VOC plume can bypass CW-1?

11:46AM 15 A. Well, I think it's essentially shown here
16 graphically. I mean, we have a red area that is represent --
17 you know, an interpreted interval of VOC contamination that is
18 detected on the Whittaker site at these three locations,
19 33 MW-1A through C, PC-4A through C, and RN-W4A through C all
11:47AM 20 have one -- it looks like one may not have VOCs in it.

21 But -- so those -- those wells have VOCs in them.
22 And between them is CW-1. And then further to the west you
23 have the Saugus production wells. And again, there's -- at
24 CW-1, there's -- there's really just not any wells that are
11:47AM 25 deep enough to be within that interval that -- that is where

1 the contamination is -- is likely to be.

2 We did see at the Whittaker site on the -- on the --
3 on the east side of this diagram one of those wells, I believe
4 it was 33 MW-1 was monitored during -- during that pumping.

11:48AM 5 And we did see a response in that well.

6 So -- so there is a response farther away than CW-1.
7 And we didn't see anything at CW-1 which would indicate that
8 it's in the shallower portion of the aquifer.

9 MR. GEE: Okay. And let's go back to the left-hand
11:48AM 10 figure.

11 Q. (BY MR. GEE:) And does this mean that VOC
12 contamination from the Whittaker site can flow to the north of
13 this site without being detected in CW-1?

14 A. I -- yeah, that's what I just tried to explain, I
11:48AM 15 think. But yeah.

16 Q. Okay. And looking at this drawing, is there any
17 other information other than contour lines that you can use to
18 determine groundwater flow north of OU-4? Directly north of
19 OU-4. Sorry.

11:49AM 20 A. Um, I'm sorry. Could you repeat your question?

21 Q. Okay. Does this mean that other than contour lines,
22 that no information -- that there is no information regarding
23 groundwater flow directly north of OU-4? Is that correct?

24 A. I mean, there's no -- there's no groundwater quality
11:49AM 25 or contaminant information within the -- again, the portion of

1 the aquifer that the wells are pumping from in that area, no.

2 Q. And does this mean that no contamination can get
3 into CW-01?

4 A. Not necessarily, no. I mean, I -- my recollection
11:49AM 5 is that CW-1 does contain perchlorate, at least -- I'm not sure
6 about -- again, there's three wells there. I believe the
7 shallowest one has been dry for some time now.

8 And the two deeper ones, um, my recollection is that
9 there is some perchlorate that's been detected there
11:50AM 10 historically. But, um, you know, there's a number of different
11 locations within the -- you know, in the area where there had
12 been releases. So just because there's perchlorate in the well
13 doesn't necessarily mean that VOCs would be there if there was
14 a release of just perchlorate.

11:50AM 15 Q. Okay. And this morning we jumped around quite a
16 bit, you know, went through your Saugus 1 and Saugus 2 -- or
17 your VOC investigation report. Just in a sentence or two, what
18 was the purpose of the 2015 VOC investigation study?

19 A. Basically, Saugus 1 and Saugus 2 had been detecting
11:51AM 20 low levels of VOCs. And there's not treatment for VOCs at the
21 treatment plant. And the agency was looking for someone to
22 investigate the source of VOCs in those wells.

23 Q. Okay. And what was the first step of your
24 investigation?

11:51AM 25 A. Uh, the first step would have been identifying

1 facilities in the area surrounding the wells, online using
2 publicly available databases from the State and going through
3 those -- that listing of facilities, using a process to, I
4 guess, categorize and screen out facilities that did not have
11:51AM 5 contamination in them that's relevant to this study, the type
6 of contamination that is, VOCs, and then using other
7 professional judgment, whittle down that list to, you know,
8 the -- the set of potential sources that additional evaluation
9 was performed on.

11:52AM 10 Q. Okay. And after you conducted the initial
11 screening, what -- what did you do after that?

12 A. So the -- you know, the screening process
13 essentially arrived at two potential sources, one being
14 Whittaker and one being SIC.

11:52AM 15 And at that point, after that, we did a couple of
16 things, looked at the VOCs that are detected in Saugus 1 and
17 Saugus 2 and compared those to the VOCs -- because it's not
18 just one VOC that are detected in either of those production
19 wells. I think there's a list of 15 or 20 different ones that
11:52AM 20 had been detected over time.

21 So compared that list to the VOCs that have been
22 detected in the monitoring wells related to each of those sites
23 to see, you know, if -- if a similar set or subset of VOCs have
24 been detected. And then kind of the flip side of that was to
11:53AM 25 look and see what were the main contaminants detected on each

1 of these sites and if those contaminants are -- are detected in
2 the production wells.

3 Q. Okay. And did you also conduct a hydrogeological
4 evaluation?

11:53AM

5 A. Yeah. I mean, that's -- the other component to that
6 would be looking at, you know, hydrogeologically where the
7 wells from those two sites -- where they're getting their water
8 from and if -- if those wells are, again, coming back to the --
9 you know, whether or not they're responding to pumping or if

11:54AM

10 they're in hydraulic connection or within a certain portion of
11 the aquifer that the production wells are producing from.

12 Q. Okay. And did you -- did you use available
13 hydrogeological data in order to conduct your evaluation?

11:54AM

14 A. Yeah. So we used data both that had been prepared
15 and presented by Saugus Industrial Center and their
16 consultants. We used data and reports prepared by Whittaker
17 and their consultants. We used the work that was prepared on
18 behalf of the Army Corps. And we used the data that was
19 available publicly to look at all of those things.

11:54AM

20 Q. Okay. And I'd like to focus a little bit on the
21 Whittaker site.

22 MR. GEE: Can we publish 34.64?

23 Q. (BY MR. GEE:) Mr. Lechler, do you recognize this
24 figure?

11:55AM

25 A. Yeah. I believe that's -- this is a figure from the

1 Saugus VOC investigation report.

2 Q. And can you briefly discuss what this figure shows?

3 A. So the figure shows wells that are -- excuse me --

4 in the Saugus formation along with the distribution of where

11:55AM

5 perchlorate has been detected in the Saugus formation. And

6 that would be the -- kind of the orange-ish yellow shaded area.

7 There's also groundwater flow arrows showing the

8 general groundwater flow direction in the Saugus formation

9 throughout this area. And then there's -- there's a blue line

11:55AM

10 that -- that shows -- well, let me back up.

11 So the -- the monitoring wells on here are shaded

12 based on the concentration of TCE in them, with the red -- the

13 red dots being higher concentrations of TCE, the -- the green

14 being lower, and the yellow and orange being somewhere in

11:56AM

15 between. The dots with the -- or the circles without any fill

16 in them were non-detect -- or there was no TCE detected there.

17 And then the blue line kind of contours the interval where

18 those detections are shown.

19 Q. And I'm sorry, the yellow blob, again, represents --

11:56AM

20 A. The -- yeah, the orange-yellow shaded area

21 represents the area where perchlorate has been detected. Um,

22 and I'm looking at the -- I don't -- I'd have to look at the

23 report to see what the time frame was on that. But if that was

24 a maximum -- or, you know, extent or if that was a -- based on

11:57AM

25 a certain time frame. But that's where perchlorate has

1 regionally been detected in those wells.

2 Q. And can I just -- can I display page 61 of this
3 report.

4 Mr. Lechler, what does this drawing represent?

11:57AM 5 A. So this is another figure in that VOC investigation
6 report. And what it shows is the Whittaker-Bermite site with
7 different shaded areas representing -- looks like the areas
8 that are shaded blue are VOC impacted areas. And these --
9 these areas were, I guess, delineated by -- by Whittaker
11:58AM 10 consultants during investigations that have been done on the
11 site. These are not areas that we identified. So this is --
12 this is some additional data from another source that we put
13 onto this figure.

14 But -- so the blue shaded areas is where there are
11:58AM 15 VOC impacts. And I believe that's in soil. And then, um,
16 the -- the red shading is where there's perchlorate impacted
17 areas. Then they further subdivide it into -- with these
18 dashed yellow lines kind of categorized into three areas -- the
19 northern alluvium, the northern Saugus, and then the
11:58AM 20 southern -- southern Saugus area, kind of -- where they're kind
21 of all clumped together.

22 And I think the intent of the figure in the report
23 was to show that there's many -- there's many sites where both
24 of these types of chemicals were released and that some of them
11:59AM 25 are, you know, at the same locations where -- both of them, and

1 then there's also some locations where one or the other was --
2 was found to be impacting.

3 Q. Okay. And did the -- did the -- did you use this
4 figure to help you determine the plume that was -- that was
11:59AM 5 displayed --

6 MR. GEE: And can you display Figure 64 again,
7 page 64.

8 Q. (BY MR. GEE:) Did you use this information to help
9 generate this plume map?

11:59AM 10 A. I mean, I -- I think the interpretation of this map
11 as it's -- as it's outlined in the report interprets that
12 there's potentially -- you know, that the result -- the
13 resultant perchlorate impacted area that we're looking at and
14 the resultant TCE contour that is shown here is not from a
12:00PM 15 single release area and it's potentially and likely that --
16 that this is a composite plume that involves migration of each
17 of those contaminants from various areas on the site with
18 the -- and I can kind of draw here.

19 You know, there's potentially a source area here
12:00PM 20 (indicating) that could be attributable to a portion of the
21 plume and then another source area where you have a -- a plume
22 coming out this way (indicating). And like -- so this could be
23 over -- and this is still simplifying the -- the overall
24 picture. But what we could have here is overlapping plumes
12:01PM 25 that were the result of releases from numerous areas on the

1 site.

2 Q. Thank you.

3 MR. GEE: Can you clear that?

4 Q. (BY MR. GEE:) You described -- there's a lot going
12:01PM 5 on in this drawing. And you earlier described this blue dash
6 line. Can you tell us again what that blue dash line
7 represents?

8 A. Uh, so, I mean, you see again the -- the circles
9 that have the shading inside of them. So the ones that are
12:01PM 10 shaded kind of a grayish color, there's no data for the time
11 frame that we prepared this map. So I guess you can
12 essentially ignore those. It's just for reference that there
13 is a well there.

14 But really what it does is it kind of encircles the
12:01PM 15 area where there's detections of TCE.

16 Q. Okay. And within the larger bluer area, there's a
17 couple of question marks. What does that represent?

18 A. Uh, an area of uncertainty. Um, again, this kind of
19 relates to an area where we have a data gap that there's --
12:02PM 20 there's concentrations, um, surrounding that area and -- and no
21 data to -- to kind of fill that gap.

22 Q. Okay. And are those the data gaps that you've
23 referenced in your conclusion?

24 A. Yeah. There was a -- one of the recommendations was
12:02PM 25 additional wells in that area to go deeper, to look within the

1 deeper portion of the Saugus formation where the wells are
2 producing their water.

12:02PM 3 Q. Okay. And you mentioned that you've reviewed data
4 recently. Is it your understanding -- or in the data that you
5 reviewed, did you see any new data associated with wells that
6 are represented by those question marks, if there were wells
7 installed?

12:03PM 8 A. Again, to my knowledge, none of the recommendations
9 that are in the VOC -- excuse me, the VOC investigation report
10 have been, um -- none of that work has been done. So, yeah,
11 there's -- to my knowledge, no additional wells, excuse me,
12 where those question marks are.

13 Q. Okay. Can you clear that?
14 And over to the right here, you have an additional
12:03PM 15 dotted line. And again, there appears to be some question
16 marks around it. Can you tell us what that dot -- that -- this
17 next dotted blue line is?

18 A. Again, similarly, it -- it encircles an area where
19 we have TCE detected and, you know, it's been detected in all
12:03PM 20 of the production wells that are within there, Saugus 1 -- or
21 Saugus 2, Saugus 1, V-201, V-205, V-157 which has been
22 destroyed, I believe had TCE in it. There's monitoring wells
23 out here with TCE. There's another one here (indicating).

24 And then we have this area where there's -- there's
12:04PM 25 no TCE detections, but then we have -- again, some uncertainty

1 up here (indicating) and we have some uncertainty down here
2 (indicating) because there's no wells as to whether or not some
3 of these concentrations here could be following these flow --
4 these flow arrows into those -- into those areas.

12:04PM

5 Q. Okay. And you have a flow area -- or a flow line
6 within -- within the plume, this one. What's the import of
7 that -- that flow arrow?

12:05PM

8 A. What's the importance? I mean, just generally shows
9 where the -- in the absence of pumping to capture the water, it
10 generally shows the direction that that water's going to -- to
11 flow. So further -- further into uncontaminated areas,
12 basically.

12:05PM

13 Q. Okay. And you have question marks around this --
14 around this blue plume. So is this blue plume actually drawn
15 based on -- on data? And which data did you use?

12:06PM

16 A. Well, yeah. It's drawn based on the data that's
17 presented on the map. So the colored circles. And then it's
18 interpreted based on groundwater flow directions and -- you
19 know, and the areas where there's lacking data was where you
20 see the -- the question marks.

21 MR. GEE: Okay. And let's see. Can you display
22 page 55? Let's take a look at the left-hand side.

23 Q. (BY MR. GEE:) This is page 55 from your report.
24 What -- what are we looking at on page 55 here, Mr. Lechler?

12:07PM

25 A. It looks like the -- the portion of this page that's

1 blown up right now is the concentration of chloroform in
2 monitoring wells that are screened within the alluvium. And
3 this looks like the maximum. So this is the maximum
4 concentration that's been detected in these wells.

12:07PM

5 Q. Okay. So does it show that there's multiple --
6 multiple potential sources of chloroform that -- chloroform
7 sources in the area?

12:08PM

8 A. I mean, it shows chloroform scattered in the -- I
9 mean, the only -- the only portion of the Whittaker site that's
10 in the alluvium is in that northern portion there. And it
11 shows some chloroform detections up there. It shows chloroform
12 detections throughout the -- the alluvium as groundwater flows
13 in the alluvium to the west. It shows, you know, a couple of
14 detections up there. And then it shows a smattering of
15 detections throughout the Saugus Industrial Center and
16 surrounding alluvial monitoring wells there.

12:08PM

17 Q. Okay. And if you -- was chloroform detected in
18 Saugus 1 and Saugus 2?

12:08PM

19 A. I believe it was, yes. I don't recall if it was
20 both wells -- I know there were some chemicals that were
21 detected more prevalently in Saugus 1 versus Saugus 2. But it
22 was detected in at least one of them.

23 Q. Okay. And what -- did you know about what
24 concentrations were detected in the Saugus wells?

12:09PM

25 A. Off of the top of my head, I don't know.

1 Q. Okay. Do you have an order of magnitude? Is it --

2 A. Um, again, it's not shown on the map here. I
3 believe they were all relatively low. I -- I -- my
4 recollection is that the only compounds that were detected in
12:09PM 5 those two wells consistently above reporting limits were TCE
6 and PCE. So they would have been near or below laboratory
7 reporting limits which would mean that they were -- most likely
8 had a -- had a "J" flag, which means it's an estimated
9 concentration.

12:09PM 10 Q. Okay. And with all those chloroform in the wells,
11 is that -- does that allow you to determine the source of
12 chloroform?

13 A. Um, I mean, we didn't really try to determine the
14 source of chloroform. But yeah, with low concentrations, both
12:10PM 15 in the wells as well as in these various areas, it would maybe
16 be difficult to determine a source.

17 I mean, chloroform is, I think, used in its native
18 form. But it is also a byproduct of the breakdown of other
19 VOCs. And so it could be -- it could be coming from a number,
12:10PM 20 I guess, of different potential processes.

21 Q. Okay. And you mentioned that you also did a
22 chemical comparison of contaminants in the Saugus well versus
23 the other sites.

24 MR. GEE: Can you publish page 27 and highlight the
12:11PM 25 table there?

1 Q. (BY MR. GEE:) Mr. Lechler, what did you do for
2 the -- in the chemical comparison portion of your report?

3 A. So it looks like here, this is a comparison of -- so
4 on the left is the listing of VOCs that had been detected,
12:11PM 5 either in Saugus 1 or Saugus 2. The next two columns show how
6 frequently -- based on the data that we used at the time the
7 report was prepared, how frequently they were detected. And
8 then the third column shows whether or not -- just with a
9 checkmark, whether or not that same VOC had been detected on
12:12PM 10 the Whittaker-Bermite property. And there's a corresponding
11 table similar to this one for SIC.

12 Q. Okay. And what does this -- the information in this
13 table tell you, other than the -- what's represented here?
14 What -- what's the importance of this table?

12:12PM 15 A. Well, I think we use this table for a couple of
16 different things. One thing we -- we used it to help kind of
17 narrow our focus on which VOCs to focus on. There were some
18 that were either not detected in Saugus 1 or Saugus 2 or
19 detected -- you know, for instance, there's a number that were
12:12PM 20 detected 1 percent of the time in I don't know how many total
21 samples. But that was probably, for instance, 1 out of 100
22 samples where it was detected and so not really going to be
23 something that we wanted to invest an extraordinary amount of
24 time into looking at if it was only detected once.

12:12PM 25 So it helped narrow the focus of the VOCs to focus

1 on. And it also told us something about whether or not, you
2 know, those -- what we've kind of refined more important list
3 of VOCs, whether or not they're detected on the various sites.

12:13PM 4 THE COURT: Mr. Gee, approximately how much longer
5 do you have with this witness?

6 MR. GEE: Maybe about 15 minutes.

7 THE COURT: All right.

8 MR. GEE: Can you display page 22? And highlight.

12:13PM 9 Q. (BY MR. GEE:) Mr. Lechler, is this the -- the table
10 that -- that you referenced for SIC?

11 A. It is, yes. So I think everything in -- everything
12 in this table should be the same as the one we previously
13 looked at, except for the checkmarks in the -- in the last
14 column of the table.

12:13PM 15 Q. Okay. And based on your comparison of chemicals
16 found in the wells versus chemicals identified at the site, did
17 you -- did this help you reach any kind of conclusions
18 regarding the more likely -- the likely sources of VOCs and --
19 in the Saugus 1, Saugus 2?

12:14PM 20 A. I mean, I think it was -- it was considered as a --
21 as one of the lines of evidence that -- you know, there was
22 more of these VOCs that were detected in the wells, than had
23 been detected on the Whittaker site, than on the Saugus
24 Industrial Center site.

12:14PM 25 Q. Okay. And the Saugus Industrial Center, were there

1 chemicals detected at Saugus Industrial Center that did not --
2 or that were not detected in Saugus 1 and Saugus 2?

3 A. Yes. So I believe in the report for each of the
4 sites early on -- and there's a section dedicated to each
12:14PM 5 side -- early on in that discussion, there's a -- a summary of
6 the prevalent chemicals -- or maybe it's in the background
7 section. I don't -- I can find it, but -- it discusses the
8 chemicals that are prevalent at each of these sites, most
9 frequently detected at high concentrations.

12:15PM 10 And Saugus Industrial Center -- I believe the three
11 that were identified were TCE, vinyl chloride, and 1,2-DCA.
12 And I don't believe that vinyl chloride or 1,2-DCA at the time
13 the report was prepared had been detected in Saugus 1 or
14 Saugus 2.

12:15PM 15 Q. And were vinyl chloride and 1,2-DCA found in high
16 concentrations in the Saugus Industrial Center monitoring
17 wells?

18 A. Again, I don't have numbers for you, but I believe
19 that, yes, that was the -- kind of the summary in the report
12:15PM 20 was that those were two of the -- those were two of the three
21 chemicals that were detected at the highest concentrations on
22 the facility.

23 Q. Okay.

24 MR. GEE: Your Honor, I guess my 15 minutes was an
12:16PM 25 overestimate.

1 THE COURT: That's often welcome. That's it for
2 your questions?

3 MR. GEE: Yes. Yes, Your Honor.

4 THE COURT: All right. Any redirect, Mr. Blum?

12:16PM 5 MR. BLUM: Yes, sir.

6 **REDIRECT EXAMINATION**

7 BY MR. BLUM:

8 Q. Mr. Lechler, the investigation you did that resulted
9 in your report, do you recall describing it as a desktop or
10 tabletop investigation?

11 A. I believe that I may have said that, yeah.

12 Q. What is a desktop investigation?

13 A. It would be one that does not necessarily involve
14 going into the field and collecting new -- new data. It's
15 using existing data to -- you know, again, essentially sitting
16 at your desk to -- to do the study as opposed to going out -- I
17 mean, a tremendous amount of work is involved to install all
18 those wells that we've been talking about. So there was none
19 of that included in this -- in the report, her study.

12:17PM 20 Q. Doesn't it also mean that when you're dealing with
21 the -- the hydrology -- hydraulic conductivity, that you try to
22 use averages instead of trying to plot out actual numbers in
23 order to make it simpler?

24 A. I guess I don't understand the question.

12:17PM 25 Q. Let's see if I can be more specific.

1 For instance, isn't one of the things that you
2 looked at, the hydrostratigraphic division of the different --
3 of the Saugus formation? Is that correct?

12:18PM 4 A. Yeah. That was -- that was a component, yeah. We
5 looked at the various HSUs.

6 Q. And isn't it true, in looking at these components,
7 you used what is called a simpler hydrostratigraphic division
8 of the Saugus formation?

12:18PM 9 A. Yeah. I -- I believe in this report we simplified
10 the various Saugus HSUs that had been numbered 1 through 8
11 and -- and put them into two separate categories, A and B;
12 whereas A was -- the Saugus unit where we did not see
13 responses -- immediate responses to pumping, and Saugus B being
14 the intervals where we -- we do see these immediate responses
12:19PM 15 to pumping.

16 Q. Now, just because a response is immediate -- is not
17 immediate doesn't mean there's no response; correct?

18 A. Correct.

12:19PM 19 Q. So the division you made was -- and one of the
20 reasons you made it was because you didn't have the budget for
21 a more complicated division?

22 A. That's not the reason, no.

23 Q. Well, how about -- one of the issues you looked at
24 was the conductivity; correct?

12:19PM 25 A. I believe there's some use of hydraulic conductivity

1 values in the report to demonstrate travel times.

2 Q. All right. And each different strata actually has a
3 different conductivity -- correct? -- or can have one?

4 A. I guess theoretically it could, yes.

12:19PM 5 Q. All right. And you didn't use the conductivity for
6 each strata, you just created an average for conductivity;
7 correct?

8 A. Uh, I believe so. Yeah.

9 Q. All right. And isn't it correct that because you
12:20PM 10 just use an average that didn't take into account the strata,
11 it's one of the reasons why your conclusions were hypothetical?

12 A. No. I don't think so.

13 Q. Well, what's the fastest strata?

14 A. I -- I believe the alluvium.

12:20PM 15 Q. Well, how about within the Saugus formation? Isn't
16 it S-1?

17 A. I don't think so. I don't -- I don't know off the
18 top of my head, but I -- if I had to guess, it would probably
19 be something in S-3. I -- honestly, I don't -- I don't know.

12:20PM 20 Q. While using an average, don't you minimize the
21 travel time for faster stratums and maximize the travel time for
22 slower stratums?

23 A. That's what an average would do, yes.

24 Q. And isn't it correct that it was your belief that in
12:20PM 25 your next investigation, one of the steps would be to use

1 actual data to determine the strata conductivity rather than an
2 average?

3 A. There was never any next investigation planned as
4 part of this.

12:21PM 5 Q. Was there next steps planned?

6 A. There was recommendations to do additional
7 characterization of groundwater quality, but there was never
8 any -- nothing as far as hydraulic conductivity values that I
9 can recall.

12:21PM 10 Q. All right. Now, Mr. Lechler, the -- you discussed
11 with Mr. Gee about how you went about determining which were
12 the potential sources and how you got it down to two. Do you
13 recall that?

14 A. Yes.

12:21PM 15 Q. Now, isn't it correct that the first cut of what
16 could be sources, you limited those sources that were already
17 determined to be VOC sources by either the Regional Quality
18 Control Board or DTSC and which were reported on either
19 GeoTracker or EnviroStor?

12:22PM 20 A. I don't believe it was just VOC sources. I believe
21 what we did was we looked at all release sites within a certain
22 geographic area that were open cases -- or actually, closed
23 cases too, I believe -- cases with the Regional Board or DTSC,
24 yes.

12:22PM 25 Q. And what's EnviroStor?

1 A. It's -- it's an online database for various
2 facilities that are regulated by DTSC, GeoTracker would be
3 the -- the same thing for sites that are regulated by the
4 Regional Water Quality Control Board.

12:22PM

5 Q. And isn't it true that you excluded sites that in --
6 based on your experience, could be VOC sources simply because
7 they weren't on one of those two lists?

8 A. Well, we didn't exclude -- we started with those
9 lists. We didn't exclude anything intentionally, no.

12:23PM

10 Q. Well, for instance, area sites such as the Newhall
11 Airport. Based upon your experience, you knew that airports
12 were traditionally a source of VOCs, but you didn't look at
13 that site as a potential site because it wasn't on EnviroStor
14 or GeoStar *[sic]*?

12:23PM

15 A. It was, actually. It was included in the first
16 list.

17 Q. Well --

18 A. It was screened out because there was no data to
19 look at for that site.

12:23PM

20 Q. And it was screened out no data even though you knew
21 from your experience that airports are traditionally, again,
22 sources of VOC contamination?

23 A. There's VOCs at airports, there's VOCs at gas
24 stations. Gas stations were screened out as well because

12:24PM

25 they're -- you know, the VOCs detected there weren't VOCs that

1 were detected in the Saugus wells. So, yeah, I mean, we didn't
2 include it because there was no data to -- to include.

12:24PM 3 Q. And you also excluded dry cleaners, which you
4 testified to were notorious contaminators of PCE; isn't that
5 true?

6 A. We excluded -- there was two dry cleaners that
7 were -- that were in the initial listing of sites. And they
8 were -- they were -- they were excluded from the final list of
9 potential sites for various reasons that are outlined in the
12:24PM 10 report, yeah.

11 Q. You would agree that dry cleaners are notorious
12 sources of PCE?

13 A. I would agree that PCE is very commonly found at
14 dry-cleaning facilities, yes.

12:24PM 15 Q. All right. And because you couldn't go out and
16 collect field data, you excluded them because you didn't have
17 data at that point?

18 A. That's not true.

19 Q. Well, you couldn't get --

12:25PM 20 A. There was data for those two facilities on
21 EnviroStor and GeoTracker based on that data and based on other
22 considerations, such as distance from the Saugus wells. They
23 were excluded, and it's outlined in the report.

24 Q. But one of the dry cleaners you excluded was
12:25PM 25 Flamingo Dry Cleaners; right?

1 A. That's correct, yes.

2 Q. Were you told by anybody at the water agency that
3 they believed that the Flamingo Dry Cleaners was a source of
4 contamination for their distribution system?

12:25PM

5 A. No.

6 Q. All right. Now, we looked at two tables, I think it
7 was Table 4-1 and 5-1. That's contamination that was found at
8 Saugus 1 and Saugus 2 and also that was found at SIC and
9 Whittaker; correct?

12:25PM

10 A. Yes.

11 Q. Did you ever take a look at all of the contamination
12 that was found at either SIC or Whittaker and compare that to
13 all the contamination that was found at the Saugus -- either
14 Saugus 1 or Saugus 2 and see whether or not Whittaker and SIC
15 explained all the contamination that they found at Saugus 1 or
16 Saugus 2?

12:26PM

17 A. Again, I -- I think I explained there was a couple
18 of VOCs or -- actually, it's almost close to half of the ones
19 that were detected in Saugus 1 and Saugus 2 that were detected
20 at such a low frequency that they were not -- they were not --
21 they were not looked at in detail.

12:26PM

22 Q. Isn't it true that you did do that comparison and
23 you found several VOCs that could not be explained by either
24 contamination found at SIC or Whittaker?

12:26PM

25 A. No. I -- I mean, I -- there's -- there's a -- there

1 are VOCs on that list that probably were not detected at either
2 of the sites. But again, they were not the VOCs that are
3 detected every time that the well is sampled. And, you know,
4 going in to try and, I guess, develop an explanation for every
12:27PM 5 detection of something in that well wasn't the intent. We were
6 looking at the -- at the concentrations and the -- and the
7 sources of the VOCs that were consistently detected and causing
8 issues at their treatment plant.

9 Q. All right. Now, does that mean that there were VOCs
12:27PM 10 found in the wells that couldn't be explained by Whittaker or
11 SIC?

12 A. There's VOCs that were detected at -- at least one
13 sample that may not have been detected at either SIC or -- or
14 Whittaker. But if it was something that was a chronic issue,
12:27PM 15 it would have been detected every time the well was sampled.

16 So as to how to explain why that very low level of
17 VOCs of some -- some specific VOC was detected, I don't have an
18 explanation for you.

19 Q. But isn't one of the possible explanations that the
12:28PM 20 VOCs that weren't from SIC or from Whittaker were from a third
21 source that you didn't know about?

22 A. There's a world of possibilities out there.

23 Q. And that's one of them, isn't it?

24 A. Sure.

12:28PM 25 Q. And by the way, you didn't exclude that as a

1 possibility, did you?

2 A. Again, those -- those -- those VOCs that were not
3 detected at a -- at a high frequency were not -- there was no
4 focus on those in the report. We very quickly got down to TCE
12:28PM 5 being the primary concern because TCE was -- was -- was the VOC
6 that was detected most frequently and consistently in both of
7 the wells and at highest concentrations.

8 Q. Does that mean you did nothing to exclude the
9 possibility that there was a third source?

12:29PM 10 THE COURT: We've gone around this. Ask another
11 question, please.

12 Q. (BY MR. BLUM:) Sir, you talked about Figure 5-4 and
13 the CW well. Do you recall that?

14 A. I don't remember which figure that is, but -- which
12:29PM 15 figure are we talking about?

16 Q. 5-4.

17 THE COURT: How much more time do you have,
18 Mr. Blum?

19 MR. BLUM: If you give me five minutes, Your Honor,
12:29PM 20 I can finish it up. Maybe six.

21 THE COURT: All right. I'm going to hold you to
22 five minutes.

23 Q. (BY MR. BLUM:) Can you look at 5-4?

24 A. Yes.

12:29PM 25 Q. Figure 5-4 is based on your hypothetical pathways;

1 right?

2 A. Uh, not necessarily. I don't -- I guess --

3 MR. BLUM: All right. Could we go to Figure 5-5,
4 which is the -- which is the plume map? 34.62, but I want
12:30PM 5 to -- it's Figure 5-4.

6 Q. (BY MR. BLUM:) All right. Now, I just want to
7 focus here.

8 A. Okay.

9 Q. Those border wells right there.

12:30PM 10 A. Yeah.

11 Q. And -- you know what? Let me get a better -- I want
12 to focus on that line, that blue line there and these border
13 wells.

14 A. Okay.

12:30PM 15 Q. You drew this map; correct?

16 A. Yeah.

17 Q. And for the onsite VOC plume, you stopped it short
18 of those three border wells; correct?

19 A. For the -- for the VOCs in the OU-4 right there,
12:30PM 20 yes.

21 Q. That was because, in your interpretation looking at
22 the data, you believed there was no VOCs detected in those
23 border wells; correct?

24 A. Well, that's what the figure shows. There's no VOCs
12:31PM 25 detected in them, right.

1 Q. And that -- and you were true to the data when you
2 drew this figure?

3 A. Correct.

4 MR. BLUM: I have nothing further, Your Honor.

12:31PM 5 THE COURT: Anything further of this witness,
6 Mr. Gee?

7 MR. GEE: No. No, Your Honor.

8 THE COURT: All right. And so we will take our
9 break. It is now 12:31. We will break for 30 minutes or until
12:31PM 10 just past 1:00 o'clock.

11 Remember, do not speak about the case, the people or
12 the subject matter involved. Continue to keep an open mind.

13 We'll see you back in 30 minutes.

14 THE COURTROOM DEPUTY: All rise for the jury,
12:31PM 15 please.

16 (Out of the presence of the jury:)

17 THE COURT: You're excused, Mr. Lechler. Please
18 watch your step going down. Thank you.

19 Please be seated.

12:31PM 20 Just before we conclude, I want to make sure that
21 everything is in order with respect to the depositions. We
22 just have depositions remaining at this point for the defense?

23 MR. BLUM: Yes, sir.

24 There is one question I have for you on the
12:32PM 25 depositions.

1 THE COURT: Yes.

2 MR. BLUM: There was an exhibit that there was an
3 objection to that you haven't ruled on.

4 THE COURT: Which exhibit are you referring to?

12:32PM 5 MR. BLUM: 1378.

6 THE COURT: And where would I find this exhibit?

7 MR. BLUM: It was in the Durant binder, Your Honor.

8 THE COURT: One moment.

9 I'll let the parties know. I may have the binder
12:33PM 10 back in chambers. I'm not locating it out here.

11 Is there anything else besides that, 1378?

12 MR. BLUM: I don't believe so, Your Honor.

13 THE COURT: All right. And otherwise, the parties
14 have resolved the issues with respect to -- is it Mr. Dawson?
12:33PM 15 Who -- who raised the issue? It was you, Mr. Richard, I think
16 as to Dawson.

17 MR. RICHARD: We haven't had a chance to meet and
18 confer regarding -- I think it was just this morning at
19 9:00 o'clock, we got their counter designation. So we'll do
12:33PM 20 that over the lunch hour -- I'm sorry, Your Honor.

21 Mr. Blum agreed in principle earlier today that any
22 counter designations would be limited to context only. And so
23 for some of their counter designations, we have no objections.
24 So I'm hopeful that with that principle in mind, we can resolve
12:34PM 25 that issue.

1 THE COURT: All right. I'll let the parties know
2 about 1378.

3 MR. BLUM: Your Honor, may I just for the record, I
4 am -- we would normally object that it is not actually rebuttal
12:34PM 5 because we didn't introduce any testimony on the issue. I'm
6 just making the objection because I think it's proper, and I'm
7 assuming you're going to overrule the objection.

8 THE COURT: Well, I don't know why you're assuming
9 that. But what is the basis for characterizing this as
12:34PM 10 rebuttal?

11 MR. RICHARD: Yes, Your Honor. We asked
12 Mr. Hokkanen yesterday about records he reviewed or did not
13 review. And so that came out in their case. And Mr. Dawson
14 was their 30(b)(6) witness for Whittaker on that issue. And so
12:34PM 15 we have seven minutes of him talking about his discussions on
16 that topic. I think that's the only reference in that --

17 THE COURT: Tell me how that's rebuttal.

18 MR. RICHARD: It shows that -- it responds --
19 provides a reason, because Mr. Hokkanen wasn't clear on why he
12:35PM 20 didn't review those. He didn't directly speak to Mr. Lardiere,
21 but this witness did.

22 THE COURT: It's not -- it's still not clear how
23 it's rebuttal. So tell me what he -- what he said that you
24 think this is rebutting.

12:35PM 25 MR. RICHARD: Well, both Mr. Dawson and Mr. Hokkanen

1 gave testimony about the history and source areas at the site.
2 And I had asked what records he had looked at, and he was
3 rather vague on that. And this explains that the records
4 weren't there for him to review and why.

12:35PM

5 So I think it's rebutting the notion that he did a
6 complete and thorough review as part of his opinions.

7 THE COURT: But how does that rebut that? It sounds
8 like he did, except that there weren't documents for him to
9 review, if I'm understanding you correctly.

12:35PM

10 MR. RICHARD: Right. But I think it underscores --
11 I guess the inference is if an expert says I reviewed
12 everything I needed to review versus there were records that I
13 could not review because they didn't exist and haven't been
14 provided. So, to me, it goes to the weight of their testimony
15 that it was incomplete because a whole category of records --

12:36PM

16 THE COURT: Do you intend to use this for closing
17 argument? If so, tell me what your closing argument point is
18 going to be because it's still getting lost on me and I suspect
19 it may get lost on the jury as well.

12:36PM

20 MR. RICHARD: Sure, Your Honor.

21 It augments some of the other testimony already in
22 the record on this point, that there were logs and daily
23 operational records and the types of documents one would have
24 as to where the hazardous substances, the TCE and the PCE, were
25 stored, used, and disposed of.

12:36PM

1 And it's Whittaker Corporation speaking to that
2 issue. And so had they called Mr. Dawson, I would have used it
3 in cross-examination, but they told me a couple of days ago
4 they weren't calling him. So I think it fairly rebuts the
12:36PM 5 notion that their experts relied on the data, the data, the
6 data as they argued and counsel has argued.

7 So is it going to be a big part of my closing? No.
8 But it will be part of my closing, Your Honor.

9 THE COURT: Let me see the portion that you're
12:37PM 10 looking to designate, and I'll make a determination.

11 So proceed on the assumption -- although, this
12 doesn't reflect any inclination. But proceed on the assumption
13 that it's going to be admitted. And the only reason you're
14 proceeding on that assumption is to give me the option so that
12:37PM 15 you then don't have to meet and confer. It's not a
16 predisposition, to say the least.

17 All right. Also, I am going to want to hear a
18 response. I know we just got it, and I'll hold comment on it.
19 But I'm going to need a response from the plaintiff on the
12:37PM 20 issue of the statute of limitations.

21 Also, I'm warning Whittaker that if I receive
22 another document in violation of a Court's order, I will
23 sanction counsel. I received, I believe, a supplemental brief
24 with respect to Mr. Alvord. And so I'll take a closer look.

12:38PM 25 But if, in fact, that is a supplement that was not invited by

1 the Court, I'm going to likely want to hear from counsel who
2 has submitted it.

3 MR. BLUM: Your Honor, that was the brief you asked
4 for that we could do on the issue of property --

12:38PM

5 THE COURT: My understanding is that you
6 supplemented that. I'm getting this information on the fly, so
7 it may be inaccurate.

8 So you're saying that you didn't provide the Court
9 with a further supplement? This was just simply in response?

12:38PM

10 MR. BLUM: Your Honor --

11 THE COURT: If that's the case, the Court
12 apologizes.

13 MR. BLUM: I understand -- Your Honor, things have
14 been moving really fast for everybody here.

12:38PM

15 I don't believe so, Your Honor. But if we did, we
16 shouldn't have and there's no reason -- but I -- I confirmed
17 this morning that we only filed one.

18 THE COURT: It's entitled "Supplemental JMOL Brief."

19 MR. BLUM: It supplemented our original JMOL brief,
20 Your Honor. It wasn't supplementing another one. That's why
21 we named it "Supplement."

12:38PM

22 THE COURT: I understand. But on what ground did
23 you have the authority to issue a supplemental JMOL brief?

24 MR. BLUM: I asked you yesterday if I could file a
25 three-page brief.

12:39PM

1 THE COURT: Oh, it's -- it's limited to that -- the
2 three pages the Court permitted?

3 MR. BLUM: Yes, sir.

4 THE COURT: All right. Then the apology stands.

12:39PM

5 Thank you. We're in recess.

6 (Morning proceedings adjourned at 12:39 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
STATE OF CALIFORNIA)

I, MYRA L. PONCE, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 2ND DAY OF DECEMBER, 2021.

/S/ MYRA L. PONCE

MYRA L. PONCE, CSR NO. 11544, CRR, RDR
FEDERAL OFFICIAL COURT REPORTER

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